Agenda Date: 03/01/01
Agenda Item: 6A

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

ENERGY

IN THE MATTER OF THE PETITION OF	)	FINAL DECISION & ORDER
THE FILINGS OF THE COMPREHENSIVE	)	
RESOURCE ANALYSIS OF ENERGY	)	BPU DOCKET NOS: EX99050347,
PROGRAMS PURSUANT TO SECTION 12	)	EO99050348, EO99050349,
OF THE ELECTRIC DISCOUNT AND	)	EO99050350, EO99050351,
ENERGY COMPETITION ACT OF 1999	)	GO99050352, GO99050353,
		GO99050354

(SERVICE LIST ATTACHED)

BY THE BOARD:

This Decision and Order memorializes and provides the reasoning for the decisions taken by the Board of Public Utilities ("Board" or "BPU") in this matter at the December 6, 2000 and the March 1, 2001 public agenda meetings. The structure of this Decision and Order is set forth in the following Table of Contents.

TABLE OF CONTENTS

I. INTRODUCTION

The Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq., ("the Act" or "EDECA") demands re-evaluation of existing energy efficiency policies and programs, N.J.S.A. 48:3-60(3) or, as the Act defines, an analysis of "existing market barriers to the implementation of energy efficiency and renewable technologies that are not, or cannot be delivered to customers through a competitive marketplace." Id. This analysis has led to careful consideration of a myriad of programs and technologies, ranging from the familiar energy efficiency appliance programs to new energy efficiency programs and Class I renewable energy programs to promote, "electric energy produced from solar technologies, photovoltaic technologies, wind energy, fuel cells, geothermal technologies, wave or tidal action, and methane gas from landfills or a biomass facility." N.J.S.A. 48:3-51. With this Comprehensive Resource Analysis ("CRA") Order, and in the tradition of encouraging energy efficiency, the BPU takes another step to address the challenges of the Electric Discount and Energy Competition Act. With the Act's elimination of the traditional retail monopolies held by electric public utilities for electric power generation and supply services, New Jersey energy consumers are being afforded the chance to access the competitive market for these services, and to select the energy supplier of their choice. This dramatic public policy change also makes it necessary to re-evaluate existing Demand Side Management ("DSM") policies and programs, to consider new energy efficiency alternatives to replace current programs in New Jersey, and to foster new energy resources in such alternatives as renewable energy sources. The Board notes that some programs are inherently tied to service reliability issues by their ability to curb demand. This focus on demand reduction is particularly important as the United States focuses its attention on shortages in New England and New York, as well as the difficulties faced by California energy markets.

After a process involving a wide spectrum of participants, including the electric and gas utilities, the Division of Ratepayer Advocate ("DRA"), environmental groups, the renewable energy and energy efficiency industries, and the public, the Board has considered the entire record within the context of the Act. In this proceeding, interested parties were given the opportunity to participate in the evaluation of these issues relative to the changing role of the electric and gas industries. Following issuance of this Order, the Board will continue to monitor how this climate develops, and to foster the development of this necessarily fluid process. The Board cannot overemphasize the need for a strong public policy with regard to establishing renewable supply-side programs in New Jersey, as well as the promotion of all energy efficiency and renewable energy technologies in our State.

The major elements of the CRA are program funding, program administration, and the program design itself. See N.J.S.A. 48:3-60(a)(3). In making our decision, the Board has considered two stipulations, filed by two groups of the parties, against the background of the full record. Here, the Board believes it has crafted a set of programs which draws from both of the settlements. In so doing, the Board is cognizant of the many areas of agreement between the two stipulations. At the same time, the Board recognizes that, while the stipulations share many areas of agreement, they do ultimately diverge into two different philosophical views of CRA. Essentially, the differences revolve around choices of program type and design for both energy efficiency programs and renewable energy, the appropriate level of funding to commit to these programs, and the administration structure that should be employed. The Board's choice of various elements from the two positions is fundamentally a discretionary decision within its jurisdiction. With this proceeding, the Board begins to achieve the long-range environmental goal of the Act to establish renewable energy programs that are indigenous to the State of New Jersey.

Facing drastic energy price escalation, the Board adopted regulations requiring electric and gas utilities to offer conservation, energy efficiency and load management programs, known collectively as Demand Side Management programs. N.J.A.C. 14:12-1.1 to 5.4. DSM programs consisted of "the management of customer demand for energy service through the implementation of cost-effective energy efficiency technologies, including installed conservation, load management and energy efficiency measures on and in the residential, commercial, industrial, institutional and governmental premises and facilities in this State," N.J.S.A. 48:3-51. The Board designed these rules to encourage cost-effective investment in Demand Side Management initiatives, while providing financial incentives to the utilities for the success of the program. Thus, each electric and gas utility developed its own DSM program, including programs to encourage high efficiency residential and commercial/industrial new construction, rebates on high efficiency HVAC[1] and motor equipment installed in homes and businesses, as well as payments to energy service companies to install energy efficiency measures that had guaranteed levels of energy savings. These programs led to the development of a robust energy efficiency market infrastructure, and new technologies and standards for high efficiency equipment in New Jersey. Each utility, pursuant to the DSM component in its rate, currently offers an array of programs under its own Board-approved DSM plans. These consist of both core programs and performance-based programs using either a standard offer or shared savings approach, with the exception of South Jersey Gas Company, which still offers programs under its Conservation and Load Management Plan. As energy policy evolved, the DSM market infrastructure has adapted to the changing environment. Furthermore, as the electric and gas industries are making the transition to a competitive market, the energy efficiency market must likewise make a transition guided by this Comprehensive Resource Analysis.

The Board begins with a discussion of the legislative goal that energy efficiency and renewable energy are to play an integral role in the energy policy of the State. The Act provides:

> Simultaneously with the starting date for the implementation of retail choice, the Board shall permit each electric public utility and gas public utility to recover some or all of the following costs through a societal benefits charge that shall be collected as a non-bypassable charge imposed on all electric public utility customers and gas public utility customers, as appropriate:
>
> . . . . . .
>
> (3) The costs of demand side management programs that were approved by the Board pursuant to its demand side management regulations prior to April 30, 1997. For the purpose of establishing unbundled rates pursuant to section 4 of this act, the societal benefits charge shall be set to recover the same level of demand side management program costs as is being collected in bundled rates of the electric public utility on the effective date of this act. Within four months of the effective date of this act, and every four years thereafter, the Board shall initiate a proceeding and cause to be undertaken a comprehensive resource analysis of energy programs, and within eight months of initiating such proceeding and after notice, provision of the opportunity for public comment, and public hearing, the Board, in consultation with the Department of Environmental Protection, shall determine the appropriate level of funding for energy efficiency

[1] HVAC stands for heating, ventilating and air conditioning systems.

> and Class I renewable energy programs that provide environmental benefits above and beyond those provided by standard offer or similar programs in effect as of the effective date of this act, provided that the funding for such programs be no less than 50% of the total statewide amount being collected in public electric and gas utility rates for demand side management programs on the effective date of this act for an initial period of four years from the issuance of the first comprehensive resource analysis following the effective date of this act, and provided that 25% of this amount shall be used to provide funding for Class I renewable energy projects in this State. [N.J.S.A 48:3-60(a)(3)]

Again, the Act states that the Board shall permit public utilities to recover demand side management costs through a Societal Benefits Charge ("SBC") collected as a non-bypassable charge imposed on customers. In order to unbundle the SBC portion of the rate, the Board first had to determine the DSM collection level on February 9, 1999. The legislative intent was to establish the unbundled SBC rate so that collections would recover the same level of programs costs in bundled rates as of that date. Compliance with this portion of the Act took place in the Electric and Gas Unbundling Proceedings, and the SBC was established for each utility with the implementation of fully unbundled tariffs: unbundled electric tariffs were implemented in July and August 1999, while fully unbundled gas tariffs were implemented commencing in 2000. The SBC has several components; the relevant part to the CRA proceeding is that established to collect the demand side management costs.

Next, the Act requires the Board to initiate a proceeding to undertake a Comprehensive Resource Analysis of energy programs, which is being completed with this Order. Id. The Act requires an opportunity for public comment and a public hearing. Id. Evidentiary hearings were held on November 15, 16, 22, 23, 29, and 30, 1999, October 11, 2000, and November 1, 2000. Comments were accepted at the public hearing, which was held on January 10, 2001. The Legislature directed the Board to consult with the Department of Environmental Protection ("Department" or "DEP") to determine an appropriate level of funding for energy efficiency and renewable energy programs to provide environmental benefits in addition to those provided by the standard offer or similar programs in effect at the time of the Act's passage. Id. The Department has provided a report, and recommendations, which the Board has considered in its decision.

The Act directs the Board to provide that the funding for new energy efficiency and renewable energy programs be no less than 50% of the total amount collected statewide for all DSM programs as of the effective date of the Act, and that such funding should be set for an initial period of four years. The intent of this section in the Act is to enable determination of the funding level for DSM programs, as opposed to the establishment of the SBC rate. Unbundling the rates, although related, is completely separate from the issue of the funding level. In order to determine this funding level, the Board first had to establish the amount of collections. It is an important distinction to make in the interpretation of N.J.S.A. 48:3-60(a)(3), that several related, yet functionally distinct, requirements are contained therein. These collections must be calculated for a period of one full year in order to comply with the Act's implicit language that CRA should be based on the actual amount collected by the gas and electric utilities, and not merely a theoretical amount. To determine the actual collections, the applicable rate(s) in effect for the time period are multiplied by the utility's sales during that period. The most recent full year of data prior to February 9, 1999, the Act's effective date, was for 1998. Using the 1998 sales and the rates in effect to collect demand side management program costs during 1998, the Board has established

the actual collections as $215 million. Based on this fact, the Act would require the annual funding for the four years of the CRA program to be at least $107.5 million per year, or 50% of $215 million. In addition, the Act requires that 25% of that amount should be used to fund Class I renewable energy projects. Id. Accordingly, that amount of funding for renewables should be at least $26.875 million, with $80.625 million for energy efficiency projects. In short, this brief reference in the Act contains instructions for establishing the unbundled rate at which the utilities will continue to collect for DSM, energy efficiency and renewable energy programs for the four years of the transition plan, how to determine the minimum funding for new programs, and funding levels for the renewable energy versus energy efficiency programs.

Finally, the Act also requires the Board to determine, as a result of the Comprehensive Resource Analysis, the programs to be funded by the SBC, the level of cost recovery and performance incentives for old and new programs, and whether the recovery of DSM costs may be reduced or extended. Id. In making that determination, the Legislature directed the Board to take into consideration "existing market barriers and environmental benefits, with the objective of transforming markets, capturing lost opportunities, making energy services more affordable for low income customers and eliminating subsidies for programs that can be delivered in the marketplace without electric public utility and gas public utility customer funding." Id. After consideration of the entire record, and stipulations submitted by the parties culminating in this Order, the Board has completed these tasks.

Thus, in summary, the Board considers the fundamental issues of funding, administration and program design. The Board must first determine the amount of funding available for CRA. As the Act directs, the Board finds that the level of DSM program costs being collected as of the effective date of the Act, that is, February 9, 1999, to be $215 million. This determination is made by calculating the actual revenues collected by each electric and gas utility for the last full year. The Board finds that this year of establishing the program, including the interim funding of $15 million, as authorized by the Board Order of December 4, 2000, and as modified by the Board at its March 1, 2001 Agenda Meeting, constitutes the first year of the program.[2] Therefore, the Board determines that the minimum funding for 2001, as required by EDECA, is $107.5 million. However, the Board finds that it is appropriate to increase the first year's funding beyond the minimum to provide the maximum amount of funding while still mitigating rate impacts. Therefore, the funding for 2001 shall be $115 million, $119.326 million for 2002, and $124.126 million for 2003. In addition, in recognition of the delay in completing the Comprehensive Resource Analysis, the Board finds that $15 million shall be added to funding for the fourth year, as will be determined to be appropriate by the Board after the lifting of the utilities' rate caps in August 2003. The Board shall allocate the funding at a proportion of 75/25 between energy efficiency and renewable energy programs, respectively.

With regard to administration, the utilities shall manage administration of the energy efficiency and customer-sited renewable programs for one year, during which time the Board shall contract with a consultant to make recommendations pertaining to program administration for the remainder of the four-year period. After the one-year transition, the consultant will assist the Board in identifying an entity to act as independent statewide administrator ("ISA"), who will take on the responsibility of administering the customer-sited renewable energy program and evaluate the utility administration

[2] This amount was originally set at $10 million. At the Board's meeting of March 1, 2001, the Board determined to increase that amount to $15 million.

of the energy efficiency programs. During the utility administration of these programs, the Board shall implement strict reporting requirements on a quarterly basis to ensure proper CRA implementation. The Board shall administer the grid supply program(s) in consultation with the Department of Environmental Protection.

The program design for renewable energy programs shall consist of a buydown program for projects primarily designed to supply a customer's energy needs and a production credit for grid supply projects awarded on a competitive basis. The basic design for energy efficiency shall be market transformation consisting of various program strategies, which will address all market segments to some degree. These are essentially the programs as outlined in the Utilities/NRDC Stipulation.

II. PROCEDURAL HISTORY

As noted above, pursuant to N.J.S.A. 48:3-60 (a)(3), the Board initiated this proceeding to undertake a Comprehensive Resource Analysis of energy programs. Following notice, public comment, a public hearing, and evidentiary hearings, the Board, in consultation with the Department of Environmental Protection, must determine the appropriate level of funding for energy efficiency and Class I renewable energy programs that provide environmental benefits above and beyond those provided by standard offer or similar programs in effect as of the effective date of the Act.

To facilitate resolution of these issues, Board Staff ("Staff") convened a meeting of interested parties on March 18, 1999 to provide a forum for the expression of views on the issues to be addressed on energy efficiency and Class I renewable energy programs in the CRA, as well as to discuss the filing requirements that should be imposed by the Board. Accordingly, Staff requested that each party submit written comments on the issues to be resolved, and the manner in which the CRA should be conducted.

The Board's consideration of these comments culminated in an Order Establishing Procedures, dated June 17, 1999, in which the Board opened a docket for each of the State's seven electric and gas utilities: Elizabethtown Gas Company ("Elizabethtown or E'Town"), Docket Number GO99050353; New Jersey Natural Gas Company ("NJNG"), Docket Number GO99050354; Public Service Electric & Gas Company ("PSE&G"), Docket Number EO99050349; South Jersey Gas Company ("SJG"), Docket Number GO99050352; Jersey Central Power & Light Company d/b/a GPU Energy ("GPU"), Docket Number EO99050348; Atlantic Electric d/b/a Conectiv ("Conectiv"), Docket Number EO99050350; and Rockland Electric Company ("RECO") Docket Number EO99050351. The Order also established tentative hearing dates and requested each utility to prepare a filing to address, at a minimum, three principal areas: (1) a proposed demand side management and renewable plan, (2) a proposed funding plan, and (3) a proposed implementation and administration plan. The Board also directed the utilities to present pre-filed testimony. Other parties were invited to make their own filings on some or all of the issues outlined by the Board, and were urged to collaborate on joint filings to the extent possible. Filings were submitted by: (1) Conectiv; (2) GPU; (3) PSE&G; (4) Joint filing by Conectiv, GPU Energy, NJNG, PSE&G, RECO, E'Town and SJG on statewide market assessment and renewable resource utilization regulations; and (5) a combined initiative of NJNG, Elizabethtown, and SJG.

In addition to the seven utilities and the Division of the Ratepayer Advocate, motions to intervene were filed by Natural Resources Defense Council ("NRDC"); SESCO, Inc. ("SESCO"); American Wind Energy Association ("AWEA"); New Jersey Public Interest Intervenors ("NJPII"); Casino Group; Energy Photovoltaics, Inc. ("EPV"); GeoSolar, Inc. ("GeoSolar"); Honeywell DMC Services, Inc. ("HDMC"); Renewable Ventures, LLC ("RV"); Eastern Heating and Cooling Council, Inc. ("EHCC") and the Environmental Defense Fund ("EDF"). Jointly, the National Association of Energy Service Companies ("NAESCO"), the New Jersey Coalition of Energy Service Companies ("NJESCO"), and ONSITE SYCOM filed a motion to intervene. The ensuing Procedural Order, dated November 4, 1999, established tentative hearing dates, addressed motions to intervene and for pro hac vice admission,[3] and granted intervenor status to the above entities.[4] Finally, while allowing all intervenors the opportunity to litigate issues of concern, the Board urged parties with similar interests to work together.

Following a period of intensive discovery, a pre-hearing conference was conducted by the advising Deputy Attorney General on November 10, 1999. Evidentiary hearings were held before Commissioner Frederick F. Butler on November 15, 16, 22, 23, 29 and 30, 1999 for testimony and cross-examination by the parties on issues identified by the Board.

More specifically, direct and/or rebuttal or surrebuttal testimony was filed by Nathaniel Greene on behalf of NRDC addressing the issues of the appropriate level of funding for new investments in energy efficiency and renewable technologies, types of energy efficiency programs that should be funded by the SBC, types of renewable energy programs that should be funded by the SBC, and criteria for administration of such programs. Dr. David A. Nichols testified on behalf of DRA addressing renewable energy, energy efficiency, universal service as it relates to energy efficiency, and rebuttal on the issue of free riders. Michael Marks testified on behalf of NJNG, Elizabethtown and SJG, proposing a CRA program for the gas utilities of New Jersey and rebuttal. Edward A. Smeloff testified on behalf of American Wind Energy Association, Astropower, Inc. BP Solarex, Energy Photovoltaics, Inc., GeoSolar, Inc., H Power Corp., Mid-Atlantic Solar Energy Industries Association, New Jersey Public Interest Intervenors, Renewable Ventures LLC, and Siemens Solar Industries, recommending a renewable energy program to foster the development of a robust renewable energy industry in New Jersey, rebuttal on utility company capability to administer renewable programs, and the sufficiency of renewable energy program costs to satisfy the legislative intent of the Act. Christopher W. Siebens testified on behalf of GPU seeking to clarify appropriate initial funding levels, administration of energy efficiency and renewable programs, and program design. Richard M. Esteves testified on behalf of SESCO, Inc. addressing requirements of Section 12 of the Act and the many questions raised by the Board in its "Order Establishing Procedures," dated June 17, 1999, and emphasizing five key points for the Board to establish a SBC to assure cost-effective, and equitably distributed benefits – environmental and economic – for New Jersey's families and businesses. Natalie Patasaw testified on behalf of the Environmental Defense Fund, discussing the options available for increasing the supply of new renewable energy technologies and recommending policies and methodologies that are responsible, cost-effective, administratively efficient, supportive of private market development, and that enable the transition

[3] The Board granted pro hac vice admission to James T.B. Tripp of EDF, Dale S. Bryk of NRDC, David R. Wooley of AWEA, Douglas H. Ward of RV and John L. Carley of RECO.

[4] At its agenda meeting of November 24, 1999, the Board also granted intervenor status to Nextek Power Systems Inc. EHCC was granted participant status.

to a self-sustaining renewable energy industry. Dr. Bruce Bailey testified on behalf of the American Wind Energy Association, discussing the characteristics of wind energy relevant to this case. Kevin C. Jones testified on behalf of Rockland Electric Company, addressing issues related to the Energy Efficiency and Renewable Resource Utilization Plan, including administration and implementation. Frank P. Marino also testified on behalf of RECO, addressing RECO's position on the implementation of energy efficiency and renewable energy programs and the level of recovery for such programs through the SBC as currently included in rates, and to respond to issues on energy efficiency and renewable energy funding requirements, RECO's compliance with such requirements, uniform SBC components, and provision of energy efficiency services by utility affiliates. Walter L. Davis testified on behalf of Conectiv, setting forth the Company's response to the BPU Order, dated June 17, 1999 with regard to CRA. Gerald W. Schirra testified on behalf of Public Service Electric & Gas Company, supporting all aspects of the company's filing prepared and submitted in response to the Board's Order. William G. Rosenberg testified on behalf of Renewable Ventures LLC, discussing the shortfall between mandated demand under Renewable Portfolio Standards and current supply of Class I renewable energy in New Jersey and across the Pennsylvania, Jersey, Maryland Interconnection, L.L.C. ("PJM"), as well as funding to supply-side projects to make up the supply shortfall, and funding of Class I renewable projects. Donald Gilligan testified on behalf of National Association of Energy Service Companies, the New Jersey Coalition of Energy Service Companies, and ONSITE SYCOM, setting forth the immediate concerns of NAESCO, NJESCO and ONSITE SYCOM relating to the CRA. John H. Manning, of Honeywell DMC Services, testified addressing specific issues concerning energy efficiency programs and funding.

On what was scheduled to be the final day of hearing, a briefing schedule was established. Initial briefs were due December 21, 1999 and reply briefs were due January 10, 2000. During the hearings, various motions were ruled on by Commissioner Butler, whose rulings are HEREBY AFFIRMED by the Board, essentially for the reasons set forth orally by Commissioner Butler.

Throughout the course of the proceeding, the parties engaged in settlement negotiations in an attempt to reach a consensus on the terms of an agreement and stipulation for submittal to the Board. At its meeting on February 2, 2000, the Board established a deadline of February 9, 2000, by which any stipulations would have to be submitted to the Board for consideration, and a deadline of February 16, 2000 for any parties to submit comments on any stipulation.

As a result of these efforts, on February 9, 2000, the parties submitted two different settlement agreements for the Board's consideration. Six of the utilities, Elizabethtown, NJNG, PSE&G, SJG, GPU Energy, Conectiv, and NRDC jointly filed a Stipulation ("Utilities/NRDC Stipulation"), which was additionally signed by EDF, American Wind Energy Association, BP Solarex, Renewable Ventures, and Eastern Heating and Cooling Council.[5] The other Stipulation was jointly filed by the DRA, NJPII, SESCO, NAESCO, NJESCO, ONSITE SYCOM, Astropower, Inc., EPV, GeoSolar, Inc., GreenMountain.com, H Power Corporation, Mid-Atlantic Solar Energy Industries Associates, Siemens Solar Industries and BP Solarex ("DRA Stipulation").[6] Comments on the stipulations were received from NRDC, EDF, RECO, jointly from NAESCO, NJESCO, and ONSITE SYCOM, NJPII, SESCO, the DRA, and jointly from the six signatory utilities. Before concluding this proceeding, pursuant to Order dated August 16, 2000, the Board directed the utilities and DRA to

[5] RECO did not join this stipulation.
[6] Not all signatories to the stipulation were formal intervenors in the proceeding.

supplement their filings with specific calculations as to the ratemaking impact of the stipulations with the opportunity to comment. While the parties to the Utilities/NRDC Stipulation filed these calculations, no such information was received from the parties to the DRA Stipulation. Two additional days of evidentiary hearings were held on October 11, 2000 and November 1, 2000. As in the initial round of hearings, testimony and cross-examination by the parties on the issue of rate impacts was presented.

On October 11, 2000, Commissioner Butler heard testimony from panels representing both stipulations on the administrative costs associated with the choice of programs and budget, and their effect on rates. Specifically, Nathaniel Greene of NRDC, Frederick Lynk from PSE&G, Robert Gallo of NJNG, Christopher Siebens of GPU and Walter Davis of Conectiv, testified in connection with the Utilities/NRDC Stipulation and Donald Gilligan of NAESCO, NJESCO, ONSITE SYCOM, Dr. David Nichols of DRA, and Lyle Rawlings of Mid-Atlantic Solar Energy Association testified in connection with the DRA Stipulation.

On the second day of hearing, November 1, 2000, the following witnesses testified as to the rate impact of the respective stipulations: Roger Pederson of Conectiv, Christopher Siebens of GPU, Kevin Moss of NJNG, Tom Kaufmann of Elizabethtown, Gary Dean of SJG, Frank P. Marino of RECO, and Gerald W. Schirra of PSE&G, presented testimony as a panel as did, S. Lynn Sutcliffe of NAESCO, Donald Gilligan of NAESCO and SESCO, and David A. Nichols of DRA. Also on the final day of hearing, DRA moved to continue the supplementary hearing. Commissioner Butler gave the parties the opportunity to brief the issue.

As in the first round of hearings, during these hearings, various motions were ruled on by Commissioner Butler, whose rulings are HEREBY AFFIRMED by the entire Board, essentially for the reasons expressed by Commissioner Butler on the record.

At its meeting of December 6, 2000, the Board addressed various outstanding motions, the rulings on which we now memorialize herein. The Board granted in part and denied in part a motion to reopen and supplement the record with the PSE&G website and DEP materials submitted to the Board. More specifically, NAESCO and SESCO urged admission into evidence of the PSE&G website as both relevant evidence itself and to impeach the testimony of PSE&G witness Gerald Schirra. Mr. Schirra had denied that PSE&G had performed analysis to quantify environmental benefits derived from PSE&G Demand Side Management programs. PSE&G's website, however, stated, "benefits to the environment have been dramatic." In opposition, PSE&G argued that the website information could have been discovered sooner and that the website material does not in fact impeach the witness.

The Board HEREBY GRANTS the motion to reopen and supplement the record with the website by taking judicial notice of the website. Further, the Board has taken notice of the arguments submitted both in support of and in opposition to the motion so that the material can be given appropriate weight.

In addition, NAESCO and SESCO sought disclosure of the DEP materials submitted to the Board pursuant to its consultative role established by statute. Specifically, pursuant to N.J.S.A. 48:3-60(a)(3), the Board must initiate a proceeding and undertake a Comprehensive Resource Analysis of energy programs and after notice, the opportunity for public comment and public hearing, the Board, "in consultation with" the DEP is to determine the appropriate level of funding for energy

efficiency and Class I renewable energy programs. NAESCO and SESCO, supported by the Ratepayer Advocate, maintained that because the statute requires the consultation, it is a matter of public information and should be made a part of the record. They further argue that the parties are entitled to consider the materials before the Board in making its decision and to have the opportunity to comment thereon.

The Board is cognizant of the direction by the New Jersey courts that factual materials relied upon by administrative agencies be made public. The Supreme Court of New Jersey in In re of Lig. of Integrity Ins. Co., 165 N.J. 75, 88 (2000), recently confirmed that its intent in McClain v. College Hosp., 99 N.J. 346 (1985), was to establish a qualified privilege for government deliberative process materials. The state agency must show that the documents to be shielded are "pre-decisional and deliberative in nature containing opinions, recommendations, or advice about agency policies." Integrity, supra, at 88. Purely factual material is not to be shielded. Id. at 85.

Accordingly, the Board HEREBY GRANTS IN PART and DENIES IN PART the motion for release of the DEP reports. As determined orally, and subsequently confirmed by letter to the parties, dated December 7, 2000, the Board directed that these materials be redacted so as to present to the parties the factual information submitted to the Board by the Department. The Board gave the parties until December 15, 2000 to file any further comments with respect to this matter due to these materials of the Department. The DRA and NJPII did submit comments, which are considered, where appropriate, in the findings of this order.[7]

Blossom A. Peretz, Esq., Ratepayer Advocate, by letter dated December 15, 2000, submitted comments on behalf of the DRA relating to the redacted DEP report that was delivered to the BPU under cover letter dated June 22, 2000. The DRA requested that it be provided an un-redacted version of the June 22, 2000 DEP report and a copy of the January 21, 2000 cover letter addressed to President Tate from DEP Commissioner Robert Shinn, and any other reports by the NJDEP to the BPU pertaining to this matter. Moreover, the DRA reserves its legal right to challenge the redaction of these documents. Ms. Peretz argues that the DRA's ability to comment on the report has been constrained.

With that background, there are many aspects of the DEP report with which the DRA is in agreement. Specifically, Ms. Peretz agrees with the DEP's statement that the level of funding for energy efficiency and renewable energy programs determines environmental benefits. Furthermore, she quotes the report stating that the greatest environmental benefit occurs by displacing a ton of conventionally generated power, first by power generated by renewable energy technologies, and then by using that power efficiently.

Although there are points of agreement, the DRA disagrees with the DEP report in several areas. In particular, Ms. Peretz asserts that the DEP report incorrectly states that only 11% of energy efficiency environmental benefits are derived from the residential sector. Ms. Peretz argues that the DEP ignored many of the measures identified in both stipulations and urges the Board to

[7] Comments submitted by Mr. Potter were received late but were nonetheless reviewed. In essence, after analyzing the redacted DEP report, Mr. Potter argues that the DRA Stipulation is superior because consumers pay only for demonstrated results which conserve energy, reduce costs and rates and provide environmental benefits.

maintain funding at a level, which does not fall below that provided for in either stipulation. Ms. Peretz asserts that equity should be taken into consideration. The DRA also points out the differences between the Utility/NRDC and DRA Stipulations in that the DRA Stipulation has "pay-for-savings" programs that are particularly suited to near-term retrofit projects that accrue environmental benefits rapidly.

There are differences in the renewable energy programs that also must be addressed. The DRA Stipulation gives gas fired fuel cells a lower incentive than renewable energy fuel cells, should the Board decide to include such fuel cells in the renewable energy program. Ms. Peretz argues that the funding of fuel cells contradicts the goals of this program, which is intended to promote the growth of renewable energy technologies, not fossil fuels. Additionally, it is inappropriate to require electric ratepayers to provide funding for a technology that promotes natural gas consumption.

The DRA disagrees with the DEP's contention that no size limit is needed on renewable resources and asserts that technologies that are near market and relatively lower in cost may not need the subsidized funding. Ms. Peretz asserts that the programs should focus on emerging technologies that are generally smaller in size and not market-ready. The DEP believes that small landfill gas projects are not near market and thus may need CRA support. However, the DRA states that the Renewable Portfolio Standards ("RPS") will provide the incentive needed to foster these smaller projects.[8] Lastly, Ms. Peretz points out that the Utilities/NRDC Stipulation does not include landfill gas as an energy project.

By letter, dated December 14, 2000, John G. Williams, of Pace Mid-Atlantic Energy Project, Inc., submitted comments on behalf of New Jersey Public Interest Intervenors on the DEP report that was redacted. Pointing to the statutory directive on DEP's role, NJPII asserts that the DEP documents within its report do not provide the BPU with any basis for making such a determination, because the report did not appropriately ascertain the level of environmental benefits associated with the various renewable energy and energy efficiency programs, specifically standard offer programs. Instead, NJPII maintains that DEP only compared the two competing stipulations, using the invalid assumptions that the funds are distributed to energy efficiency and renewable energy in a similar manner, and that the types of programs and technologies funded produce the same level of energy reductions. Moreover, NJPII agrees that DEP made no calculations for avoided air emissions for such pollutants as CO_2, NO_x, SO_2, particulates, Hg, and VOC's. The DEP simply used dollars spent on each program as a proxy for determining environmental benefits.

Conversely, NJPII had previously submitted a methodology for calculating environmental benefits that was not used by either the BPU or the DEP. NJPII argues that only one program from the Utilities/NRDC Stipulation has an energy savings goal, while the DRA Stipulation has "pay-for-savings" programs that are both measurable and accountable. NJPII continues by stating that these "pay-for-savings" programs could result in such load reductions as 24 cents/kWh on summer weekday afternoons in the year 2000, and 14 cents/ kWh during the summer off-peak hours (6 a.m. -10 p.m. except peak hours). Thus, NJPII does not accept the DEP conclusion that both programs provide equal energy savings. Accordingly, NJPII argued that the BPU has no basis for a finding that any of the programs will provide environmental benefits "above and beyond" those in place prior to EDECA.

[8] EDECA calls for the establishment of the Renewable Portfolio Standards. N.J.S.A. 48:3-87.

NJPII then goes on to state its recommendations, which are similar to those outlined in the DRA Stipulation. These recommendations include funding of $128 million annually for energy efficiency and renewable energy programs, 25% of which should be for Class I renewable energy programs and 75% of which should be for energy efficiency. The energy efficiency funding should be evenly divided between "pay-for-savings" and market transformation programs. NJPII further recommends that a working group be convened to evaluate long-term programs, and an audit be conducted on funds collected in year 2000 to assure their use for energy savings. Finally, NJPII argues for release of the full DEP report, without redaction.

In addition, at the meeting of December 6, 2000, the Board considered three other motions. The Board considered the motion by SESCO to strike portions of the testimony of GPU witness Christopher W. Siebens during the November 1999 hearings because receipt of a subsequent transcript request allegedly weakened the strength of the testimony. More specifically, SESCO moves to strike two pages of the Siebens testimony on November 15, 1999 as a result of its counsel having asked some questions concerning the level of environmental benefits being then achieved by JCP&L's Demand Side Management Programs. Siebens answers that the level was about "two thirds on a proportionate basis of what has been delivered by the standard offer provided by PSE&G" or "135 megawatts" of energy savings. Counsel for SESCO made a transcript request for the basis of the statement. On receipt of same, counsel contends that the answerer failed to disclose the basis for Siebens' answers. GPU provided further information to SESCO which did not satisfy the concerns.

This recitation of events demonstrates that the motion essentially goes to the weight of the testimony of a witness. Striking testimony is an extreme sanction not called for under the circumstances presented here. Accordingly, the Board HEREBY DENIES the motion, but in so doing, notes that all the arguments and supporting papers in connection with the motion, including the response to the transcript requests, have been made part of the record and have been considered.

The second motion was more by way of a request by the New Jersey Public Interest Intervenors, NAESCO and SESCO that the Board supervise negotiations among the stipulating parties. The Board notes with appreciation the efforts among the parties which led to the adoption of two, albeit different, stipulations, but will not delay this matter further to try to bring all the parties to complete accord. Accordingly, the motion is HEREBY DENIED. The Board would note, however, that the parties were always free to undertake such an effort on their own.

Finally, as noted above, some of the parties filed a written motion to supplement the oral motion made on the last day of testimony on November 1, 2000. Specifically, the DRA, NJPII, NAESCO and SESCO move to reopen the evidentiary hearings to admit evidence demonstrating positive ratepayer benefits of the DRA stipulation or, in the alternative, to reconsider disallowance of rebuttal evidence submitted by DRA, NAESCO and SESCO to demonstrate ratepayer benefits of their stipulation. This motion is HEREBY DENIED. The DRA and counsel for NAESCO and SESCO seek to introduce evidence which Commissioner Butler ruled as being beyond the narrow scope of the limited proceeding to consider the actual rate impact of the respective stipulations. The parties have submitted nothing which compels the Board to continue the proceeding. Essentially, the moving parties take a very broad view of the concept of "ratepayer impact," while the Board had a narrower view envisioned when it scheduled the additional days of hearing. While

the Board concedes a certain superficial attractiveness to wishing to include in this record a broad scope of materials, it is also important to conclude matters.

Finally, on January 10, 2001, following notice, a public hearing was held at the Board's Newark offices. The purpose of the public hearing was to allow comments, either oral or written, on these proceedings, without cross-examination, from the public, the utilities or any other parties who have been participants in this proceeding.

All filings, transcripts, and stipulations were made available for review prior to the public hearing. Furthermore, a notice of the public hearing was published in various newspapers throughout the state on December 26, 2000. The following people presented comments: Robert Shinn, Commissioner of the Department of Environmental Protection; Dale Bryk on behalf of NRDC; William Potter on behalf of NAESCO and SESCO, Inc.; Todd Foley on behalf of BP Solarex; Ron Kamen on behalf of a consortium of environmentally responsible companies, including Phillips Lighting, Calmac Manufacturing Corporation, B&B Engineering, Renewal Realty, various electrical distribution companies and carpet recycling companies; Thomas Leyden on behalf of Power Lite Corporation; Mark MacCracken of Calmac Engineering; Donald Gilligan on behalf of NAESCO; John Leibowitz; Ed Smeloff of Pace Law School Energy Project; Blossom Peretz of the Ratepayer Advocate; Dolores Phillips on behalf of Government Relations for Energy Photovotaics ("GREP"); Natalie Patasaw on behalf of EDF; John Cooper on behalf of Meri Star Hotels; and Lyle Rawlings on behalf of the Mid-Atlantic Solar Energy Industries Association and the New Jersey Solar Industry.

Robert Shinn, Commissioner of the Department of Environmental Protection, testified that energy is the single largest source of air pollutant emissions. He notes that the Act sought to address those negative impacts while advancing the Governor's goal that New Jersey be a self-sustainable state in energy. TR- 1/10/01, at 5. Commissioner Shinn urges use of the New Jersey Greenhouse Gas Action Plan to establish the environmental goals and objectives for the energy efficiency and renewable energy programs in a flexible manner and through on-going consultation by the DEP with the Board. TR-1/10/01, at 9. Commissioner Shinn supports the 75/25 percent split between energy efficiency and renewable energy programs. TR- 1/10/01, at 13.

Finally, regarding administration of the programs, Commissioner Shinn states that the Board, in consultation with the DEP, has the required expertise to insure both an economically efficient and operationally sound competitive energy market. TR-1/10/01, at 17-18. He recommends that the BPU, in consultation with the DEP, administer the grid supply Class I renewable energy programs through a competitive bid process. TR-1/10/01, at 18. He also stated that the utilities, on an interim basis, should administer the energy efficiency and customer sited Class I renewable energy programs with measurable and achievable environmental goals and targets, on a statewide joint and coordinated approach, with oversight by the Board, and in consultation with the DEP. TR-1/10/01, at 18.

Dale Bryk from the NRDC spoke in support of the Utilities/NRDC Stipulation. She also spoke on behalf of Honeywell DMC with regard to administration and program design and Rockland Electric. TR-1/10/01, at 24 -25. Ms. Bryk notes that the energy savings from energy efficiency and renewable energy programs can insulate customers against high energy prices as well as offset the need for more generation facilities and transmission lines. TR-1/10/01, at 26.

She also discusses the resulting environmental and cost benefits of the Utilities/NRDC Stipulation. TR-1/10/01, at 27. On renewable energy program design, Ms Bryk notes that there is broad agreement for customer rebate programs for the installation of solar panels, fuel cells or wind turbines and for large-scale renewable energy programs that supply power to individual customers through the grid. TR-1/10/01, at 27-28. Moreover, she supports an auction program and a market development program designed for maximum projects at the lowest prices. TR- 1/10/01, at 28.

Ms. Bryk points to the funding similarities in both pending stipulations. Each stipulation supports increases in funding for new programs over prior years and guarantees that higher levels of funding occur for eight years. TR-1/10/01, at 30. On administration, Ms. Bryk points out that all parties agree with the concept of a statewide administrator to oversee the grid-supply renewable program and that most parties agree, that on an interim basis, utilities should continue to administer the energy efficiency programs. TR-1/10/01, at 30. Ms. Bryk supports utility administration of these programs under the supervision of the BPU. TR-1/10/01, at 31.

R. William Potter, representing NAESCO and SESCO, Inc., supports the DRA Stipulation because it provides for the statutory minimum level of funding of $128 million and is dedicated to "pay for results." TR- 1/10/01, at 111. Mr. Potter argues that the Utilities/NRDC Stipulation focuses on programs related to the production of studies, market reviews, baseline assessments, evaluations and educational efforts which do not result in energy savings benefits, and which are similar to the core programs under the DSM regulations, which were not subject to any cost benefit test. TR-1/10/01, at 114. Mr. Potter urges a compromise between the two approaches: $64 million for programs as described in the DRA Stipulation with the other half dedicated to the programs proposed by the Utilities/NRDC Stipulation. TR- 1/10/01, at 116.

At the public hearing, Todd Foley, representing BP Solarex, stresses the salutary attributes and importance of solar energy. Mr. Foley expresses support for solar programs, both a customer sited rebate program, and a grid supply program, TR- 1/10/01, at 132-133, as well as establishment of effective metering and interconnection standards with these programs. TR- 1/10/01, at 134-135.

Ron Kamen, representing a consortium of environmentally responsible companies, stresses the importance of a wide variety of energy conversion technologies in the plan that is adopted by the Board. TR- 1/10/01, at 140. He also supports a program that is implemented statewide rather than different systems administered by each of the seven utilities.

Thomas Leyden, representing Power Lite Corporation, urges prompt implementation of the CRA program, TR- 1/10/01, at 144. He urges rejection of the Utilities/NRDC Stipulation because there is an inherent conflict of interest between the utilities and solar projects. TR- 1/10/01, at 147-148. He also notes that the private sector would be better at promoting renewable energy systems. TR-1/10/01, at 148.

Mark MacCracken, CEO of Calmac Manufacturing, represented the Air-Conditioning and Refrigeration Institute, Thermal Energy Storage Section. TR- 1/10/01, at 153-154. Mr. MacCracken expresses the importance of energy storage technology and its energy savings potential, with concomitant savings and environmental benefits. TR – 1/10/01 at 154, 159.

Donald Gilligan, representing NAESCO, in support of the DRA Stipulation, requested that the Board take judicial notice of the proceedings underway in California because one of the causes of

California's problem was the shift away from energy acquisition programs to market transition programs. TR- 1/10/01, at 160, 162, 163. He notes that this essentially mirrors the difference between the Utilities/NRDC Stipulation, which promotes market transition programs, and the DRA Stipulation, which encourages resource acquisition programs and pay for savings/performance programs. TR-1/10/01, at 163-164.

John Leibowitz, an independent energy analyst, advocates for cogeneration and combined heating and power. TR- 1/10/01, at 172. Mr. Leibowitz believes that all barriers should be removed for combined heat and power plants so they may be locally developed. TR- 1/10/01, at 173.

Ed Smeloff, Executive Director of the Pace Law School Energy Project, testifies that energy efficiency programs help reduce the retail price, consumers pay for electricity and thus effect the rate impacts on consumers once the retail price caps are lifted in 2003. TR-1/10/01, at 92. Mr. Smeloff argues that as energy efficiency reduces demand, the price for electricity drops and that the reduction in demand not only benefits the consumer, but lowering demand during peak hours benefits all ratepayers in the state. Mr. Smeloff argues that this value is determinable. TR-1/10/01, at 95. Accordingly, he urges a resource acquisition design for energy efficiency programs as opposed to the market transformation design which does not produce measured results. TR-1/10/01, at 100 - 103.

The Director for the Division of the Ratepayer Advocate, Blossom Peretz, provided remarks in support of the DRA Stipulation. TR- 1/10/01, at 36, 41. Ms. Peretz urges establishment of an independent statewide administrator to handle the funding for both energy efficiency and renewable energy projects, as well as placing the funds in a single renewable trust fund. TR-1/10/01 at 35-36. Ms. Peretz counsels against recovery of lost revenues. TR- 1/10/01 at 40. Ms. Peretz supports the allocation of funds in the Board's Interim Order between energy efficiency and renewable energy programs under an independent administrator. TR- 1/10/01 at 41, 39.

On behalf of, and as Director of GREP, Dolores Phillips testified. TR- 1/10/01, at 46. Ms. Phillips recommends that the Office of Sustainability at the NJ Department of Commerce or the Board administer the renewable energy programs. TR- 1/10/01, at 49. She also questions utility administration of the customer sited energy efficiency and renewable energy programs, TR-1/10/01, at 50, 51. Finally, she expresses disappointment in the CRA process. TR- 1/10/01, at 53.

Natalie Patasaw, on behalf of EDF, supports quick implementation of the CRA, which fosters competition in the energy efficiency, renewable energy, and conventional electric generation industries. TR- 1/10/01, at 55. Ms. Patasaw further supports renewable energy coupled with increased energy efficiency programs which promote building retrofits, new construction, better and smarter appliances and industrial innovation. TR- 1/10/01, at 58, 59. Finally, Ms. Patasaw supports a statewide administrator for grid supply renewable energy programs and, initially, temporary utility administration for no more than a year with ultimate responsibility going to an independent statewide entity. TR- 1/10/01, at 60.

John Cooper from Meri Star Hotels supports funding for Geo Thermal/Geo Exchange technology for the underfunded commercial sector because of its tremendous environmental track record. TR-1/10/01, at 63.

Lyle Rawlings, representing the solar industry for New Jersey and the mid-Atlantic region, expresses concern with the conflict of interest if the energy efficiency and customer sited renewable programs are administered by the utilities. TR- 1/10/01, at 67. Further, Mr. Rawlings is concerned that a significant portion of the funding goes toward research and development, training, awareness and outreach, market facilitation, market analysis and target marketing, and not enough is going toward the actual renewable projects themselves. TR- 1/10/01, at 71. He also argues for no more than 5% of the funding to go for administrative costs, and no more than 15% for research and development and education training. TR- 1/10/01, at 75, 76. Mr. Rawlings also calls for consideration of the situation in California.

III. COMPREHENSIVE RESOURCE ANALYSIS

As noted above, following the parties' initial filing of positions and testimony, Commissioner Butler presided over six days of evidentiary hearings. Thereafter, the parties submitted briefs and reply briefs on the issues. Key elements of the briefed positions of various parties with regard to certain specific issues of relevance are summarized hereinbelow, by issue. In addition, as required by N.J.S.A. 48:3-60(a)(3), the DEP conducted an analysis for this proceeding in connection with energy efficiency and renewable energy funding. Accordingly, the Department undertook to evaluate the testimony, information and data, both written and oral, submitted at the evidentiary hearings. The Department made recommendations to the Board to implement the societal benefits charge funding to aid in meeting the legislative intent of developing energy efficiency and renewable energy programs that provide environmental benefits above and beyond those currently in place. The Department considered the environmental benefits of various program funding levels, program administration, and types of programs for energy efficiency and Class I renewable energy. Following that analysis, the Department also reviewed the stipulations and submitted comments to the Board.

A. Funding

1. Annual amount

The DRA recommends that the minimum annual amount for renewable energy and energy efficiency programs be $128.36 million. DRA Initial Brief, at 7. The DRA argues that the Act requires the funding to be 50% of the amount that was being collected in electric and gas utility rates on February 9, 1999, which was $256,720,175. Id. DRA states that 25% of the $128.36 million, or $32.1 million, should be allocated to Class 1 renewable energy projects and the remaining 75%, 96.3 million, to energy efficiency projects. DRA Initial Brief, at 11.

The DRA claims the utilities' efforts, except PSE&G's, to find statutory support for their interpretation, fail. DRA Initial Brief, at 9. Instead, DRA argues that the impacts after the rate freeze period should not affect the Board's decision on the level of funding because the programs funded will reduce customers' consumption thereby negating or reducing the impacts of increased rates. DRA Reply Brief, at 12.

EDF defers on the issue of overall funding to Pace Energy Project, NRDC and the DRA, but asserts that the funding level for renewable projects is critical and the BPU should set minimum levels for all eight years. EDF Initial Brief, at 9. EDF urges an overall initial minimum per year funding level of $115 million, but asserts that the quality, as well as the quantity of renewable investments, will determine success. Id.

NJPII interprets the Act so as to put the combined funds at a base of $128 million (50% of $256 million) annually. Initial Testimony/Smeloff, at 23. NJPII bases this on several references in the Act to the total statewide amount being collected in rates. Id. NJPII points out that the legislation does not suggest adjustments for lost revenues. Initial Testimony/Smeloff, at 24. NJPII provides a detailed analysis of the legislative language, concluding that the retirement of past standard offer or similar commitments are to be included in the initial calculation of the total statewide amount. Id.

ESCO intervenors urge rejection of the utilities' interpretation of the Act. ESCO Intervenors Joint Initial Brief, at 10. Instead, they argue that the correct interpretation of the Act is that the 50% of collections is a floor not a ceiling. ESCO Intervenors Joint Initial Brief, at 14. The Board should set the funding level by February 3, 2000. ESCO Intervenors Joint Initial Brief, at 15. They argue that the utilities' arguments lack a reasonable statutory foundation and rely on an incorrect understanding of legislative intent. ESCO Intervenors Joint Initial Brief, at 22.

Conectiv asserts that the Act calls for a gradual increase in funding up to a minimum of $140,000,000 in the eighth year for energy efficiency and renewable energy, as well as program costs that it has proposed as the appropriate funding level. Conectiv Brief, at 5. Conectiv proposes maintaining its level of spending at what is included in its unbundled rates, in response to the dichotomy between the four-year rate cap and the issues of funding and recovery of energy efficiency and renewable energy programs. Conectiv Brief, at 6. Conectiv also notes that the witnesses for both NJPII and the DRA recognize a need for balancing the rate impact with the desire to spend more, as evidenced by witnesses Dr. Nichols' and Mr. Smeloff's support for phasing in the increase in rates for some utility customers to equalize spending statewide. Conectiv Brief, at 6, 7.

Conectiv argues that it, along with all the utilities, collected $131,890,975 for actual programs and the amount collected for other costs was an additional $124,829,200. Conectiv Brief, at 7, 8. Conectiv argues that a statewide collection level of $256 million should not be used as the basis for a decision, and that the record contains uncontroverted evidence that the statewide amount is $131,890,975. Conectiv Brief, at 8. Conectiv further maintains that the $256 million includes recovery of deferred unrecovered balances and other monies, which do not fall into the category of Demand Side Management programs, and the Act is clear that these are not part of the calculation of minimum funding. Conectiv Brief, at 9. Conectiv relies on language in the Act, which contemplates additional funds becoming available and being added to the funding available. Id. Finally, Conectiv asserts that the Board's determination of the minimum funding cannot be arbitrary, but based on record evidence. Id. Because Conectiv has no pre-existing funding commitments, it asserts it is able to dedicate the full recovery amount of $4.8 million to new programs. Conectiv Brief, at 10. Conectiv urges that the minimum statewide funding level for new programs be $66 million based on the uncontroverted record in evidence. Conectiv Brief, at 12.

GPU points to the plain language in the Act as the basis for funding and argues that the interpretation and application thereof is a legal matter for the Board as the trier of law. GPU Brief, at 6. GPU asserts that no witness who testified on interpretation of the Act regarding the initial funding level was qualified as a legal expert in this proceeding and was, therefore not entitled to be given any weight by the Board. Id. GPU notes that the initial statewide funding level based on the

Act's plain language, is $65 million.[9] GPU Brief, at 7. GPU bases this on the reference in the Act to Demand Side Management program costs, which it asserts are clearly separate from other Demand Side Management costs as defined in the Board's existing DSM regulations, N.J.A.C. 14:12-4.1(c). Id. Additionally, GPU asserts that its Board-approved rider, Demand Side Factor, defines the separate costs being collected through the SBC, which are program costs, lost revenues, performance incentives and a reconciliation adjustment. GPU Brief, at 7, 8. Additionally, GPU asserts that the Board articulated in its June 17, 1999 CRA Order that recovery of both direct DSM costs and indirect DSM costs are provided for in the DSM regulations and that this distinction was also recognized by the NJPII witness. GPU Brief, at 8. GPU argues that the reference to program costs in the Act, rather than all DSM costs is significant and clearly indicates that the initial program funding should be based on the amount of program costs being collected from all of the utilities of $131 million, and therefore the level for new programs would be a minimum of $65 million. GPU Brief, at 9.

GPU further argues that because of the State's policy to lower rates, $65 million is the appropriate level of funding because any number above that would potentially increase rates. GPU Brief, at 6. GPU asserts that witnesses for NRDC, NJPII and DRA agreed during cross-examination that one of the primary purposes of the Act was to decrease electric rates, yet they proposed that the new program funding be established at $128 million. GPU Brief, at 10.

GPU observes that the DRA's witness, Dr. David Nichols, acknowledged that electric utility rates cannot be increased, and that due to deferred balances during the four-year rate caps, future rate changes might result from its funding proposal. Additionally, GPU asserts that Mr. Smeloff, on behalf of the joint filers, acknowledged that deferrals might accrue as a result of the DRA's funding proposal under the rate cap, and the NRDC's Mr. Greene stated that the impact of his proposal on deferrals would have less impact than they would if the Utilities were not collecting SBC funds at all. GPU Brief, at 11. GPU asserts that none of these witnesses provided any documented support nor performed any analysis of the impact of their funding proposals on the deferred balance. Id.

Christopher Siebens of GPU testified that if NRDC's proposal were adopted, the result would be an additional $80 million plus interest to GPU's deferred balance at the end of the four years. GPU Brief, at 12.

GPU finally asserts that it collected $23 million for DSM programs resulting in a 50% spending level of $11.5 million, but that its proportionate share is $15.5 million. GPU Brief, at 16. However, it proposes a level of $19 million. Id. In its May 24, 1999 Summary Order, the Board approved any DSM over recoveries which accrue to be applied to the Freehold Buyout Costs during the first four years of competition.[10] Id. GPU asserts that several parties claim this is inconsistent with the Act. However, Mr. Siebens asserted that these funds belong to customers and are benefiting customers by limiting the accrual of deferrals at the conclusion of the four-year period. Id.

GPU states that other parties have broadly interpreted the Act regarding the initial level of funding

[9] The reason for the appearance of both $65 million and $66 million is that the actual figure is $65.5 million, and in one instance, the figure was rounded up, while in other instances, it is rounded down.

[10] The Board has previously approved the GPU April 14, 1999 stipulation with modifications. The recovery of the buyout costs for the Freehold Cogeneration Contract were to be offset by any DSM over recoveries as set forth in the stipulation.

to further their own economic interests or those of their supporters. GPU Reply Brief, at 2. GPU notes that several parties assume the amounts being collected in rates is the same as the amount being collected for DSM programs, and that assumption is erroneous as these collections are used also for indirect program costs, such as recovery of amortized past commitments. Id.

As to NJPII's argument that GPU's interpretation of the Act regarding overall funding is inconsistent with its calculation of budgets for new programs, GPU responds that it is consistent because the initial funding minimum is based on 50% of SBC collections without lost revenues, incentives or past commitments, as is its budget for new programs. GPU Reply Brief, at 4. GPU asserts that the DRA proposal to double spending during the rate cap period is more unreasonable than waiting until the second four-year period. GPU Reply Brief, at 5. GPU notes that the Act does not mandate a statewide minimum funding level until the eighth year, obviously acknowledging the rate cap and the potential for significant deferred balances accruing and the necessity of allowing the Board flexibility in the early years to allow for achievement of the primary purpose of sustained rate reductions for electric customers. GPU Reply Brief, at 5, 6. GPU further argues that allowing 2000 as a transition year addresses the DRA's concern that there not be a dramatic increase in funding levels and is reasonable because of the amount of time, at least four months, that it will take to begin implementing the programs following Board approval. GPU Reply Brief, at 6. GPU Energy therefore urges the Board to initiate the first four-year period on January 1, 2001. GPU Reply Brief, at 7.

PSE&G argues that the legislative intent of the Act is unclear and that the formal legislative history of the Act does not clarify the intent. PSE&G Initial Brief, at 1. Accordingly, it takes the position that it is for the Board to decide the level of funding, and is a state policy issue taking the interests of the parties into consideration, and not a factual issue. PSE&G Initial Brief, at 2.

RECO asserts that statewide funding for energy efficiency and renewable programs is $65.9 million, and that $16.5 million (or 25%) must be allocated to renewable resource programs. RECO Reply Brief, at 7. According to RECO, although $256.7 million was collected at the time of the effective date of Act, February 9, 1999, it included standard offer, bidding costs and prior period under-collections. Id. RECO argues that the Act does not require either that the minimum amounts be spent each year, or on average over the four years, only that the minimum be reached by the end of the four-year period. Id. It proposes a budget of $260,000, including $71,375 for renewables, as appropriate and in excedence of the Act's requirements. RECO Reply Brief, at 8. RECO was collecting $356,000 annually in rates on the date of the Act. RECO Reply Brief, at 22. Fifty percent of that is $178,000, so Rockland exceeds the required minimum. RECO Reply Brief, at 25. Any additional spending would result in additional deferrals. Id.

Collections by the Independent Gas Utilities[11] ("IGU"), as of the date of the Act, were not in dispute. The Independent Gas Utilities' proposed spending met or exceeded the minimum amount mandated by the Act, and should not be increased. The Legislature considered the Independent Gas Utilities' past spending levels appropriate by mandating their future spending based on current spending. These are realistic levels of spending for each of the Independent Gas Utilities. IGU Initial Brief, at 9-12.

[11] This group is comprised of NJN, E'Town and SJG.

NRDC asserts that the Act requires the Board to establish minimum funding for new energy efficiency and renewable energy investments of no less than 50% of the amount currently collected in rates for all costs associated with demand side management and energy efficiency, or $128 million. Initial Testimony/Greene, at 2, 3. NRDC asserts that the Board should not permit the utilities to use funds collected through the SBC for costs other than those specified in Section 12, such as the proposal to pay off a NUG contract.[12] Initial Testimony/Greene, at 7.

2. Allocation between gas & electric

DRA believes that gas ratepayers should not pay for Class I renewable energy projects and would have electric company ratepayers pay the full $32.1 million. DRA Initial Brief, at 11. However, DRA recommends that the 75% or $96.3 million for energy efficiency projects be collected from gas and electric ratepayers in the same proportion as 1998 gas and electric gross revenues from sales. DRA Initial Brief, at 12. DRA asserts that electric revenues were 77% of the total so that $74.2 million would be collected from electric ratepayers and 23%, or $22.1 million, from gas ratepayers. RA-23, Exhibit DN-3. DRA Initial Brief, at 12. As a result of this allocation, electric ratepayers will need to pay an annual total of $106.2 million, while gas ratepayers would only pay $22.1 million. DRA Initial Brief, at 12.

Regarding the allocation of funding, GPU asserts that none of the intervenors have proposed an equitable distribution of funding, and that parity should be a long term goal based on consistent new program rates per therm/kilowatt and the accrual of deferred balances should not be based on a utility providing more than its fair share of funding. GPU Initial Brief, at 13. GPU asserts that the allocation proposal by the DRA and NRDC are particularly unfair to GPU customers because its SBC is higher due to greater historical spending, which results in a disproportionate burden of future statewide funding. GPU Initial Brief, at 14. GPU asserts that the calculation by the DRA's witness that electric sales account for 77% of the 1998 sales and gas sales account for the remaining 23% is a reasonable basis for funding allocation, and that allocation should be based on each utility's proportionate share of gas or electric sales. GPU Initial Brief, at 15. GPU's share of electric sales is approximately 25% therefore it asserts its share would be 25% of 77% of $65 million or $12.5 million. Id. GPU further asserts that even if the starting point were $128 million, its share would be $24.6 million, not the $38-45 million NRDC recommends or the $28 million the DRA recommends. Id. GPU asserts that these proposals do not address the Board's concern regarding funding disparities noted in the Board's report entitled, Restructuring the Electric Power Industry in New Jersey, at 144, and recommends the Board not adopt them. Id.

GPU disagrees with the DRA's proposal that gas utilities should not have to fund renewable energy programs. Id. GPU asserts that the Act does not impose a rate cap on gas utilities and does not limit the SBC amount being collected by gas utilities on the Act's effective date. The DRA's proposal to exempt the gas utilities is unfair to electric customers and should be rejected. Id.

GPU asserts that other parties have broadly interpreted the Act regarding the initial level of funding to further their own economic interests or those of their supporters. GPU Reply Brief, at 2. GPU asserts that several parties have made the erroneous assumption that the amounts being collected

[12] A NUG is a non-utility generator.

in rates are the same as the amounts being collected for DSM programs. Id. GPU supports its interpretation of the Act by stating "It is axiomatic that the meaning of a particular phrase or provision of a statute is to be determined in the context of the whole statute." Davis v. Heil, 132 N.J. Super. 283, 294 (App. Div.), aff'd 68 N.J. 423 (1975). Id. GPU disagrees with NJPII's argument that GPU's interpretation of the Act regarding overall funding is not consistent with its calculation of budgets for new programs. GPU Reply Brief, at 4. GPU asserts that it is consistent, because the initial funding minimum, as well as its budget for new programs, is based on 50% of SBC collections without lost revenues, incentives or past commitments. Id.

PSE&G believes it is first necessary to determine the allocation between electric and gas utilities and then within that, the allocation to each utility. PSE&G Initial Brief, at 4. PSE&G asserts that it be first "…done as a pro ration based on total statewide electric utility non-supply related revenues and total statewide gas utility non-supply related revenues." Id. PSE&G further asserts that the electric utilities' allocation should be calculated on the applicable electric system output and the gas utilities on the applicable gas send out. PSE&G Initial Brief, at 5.

This, PSE&G asserts, should result in parity, including all program costs in the spending rate among all electric utilities and among all gas utilities. Id. PSE&G asserts that these program costs must include current energy efficiency and renewable energy program spending including Standard Offer, but not include lost revenue recovery or recovery of prior deferred balances. Id. PSE&G asserts that parity is a major issue and provides Exhibits PSE&G-CRA 5 & 6 to demonstrate the disparity, and show that PSE&G is spending at a significantly higher rate than any other utility. Id.

Regarding the DRA's argument that renewable energy programs should be paid for entirely by electric ratepayers, PSE&G argues that the legislation envisions no such division of funding responsibility. PSE&G Initial Brief, at 6. PSE&G asserts that it is fair for gas ratepayers to participate in funding renewable programs because the potential benefits, such as clean air, do not benefit electric ratepayers alone. Id.

3. Parity

NJPII supports funding level parity among all the electric utilities and among the gas utilities, on a per kwh or per therm basis. Testimony/Smeloff, at 23. They support a phase-in to achieve new program funding level parity over the first four-year period. Id. NJPII asserts that program-funding levels must be determined on a statewide basis to provide geographic equity and to prevent restrictions on the development of the renewable energy market. Id. NJPII opposes inclusion of recovery requirements for past program activities in the calculations to achieve parity among all utilities in the future. Testimony/Smeloff, at 24.

AWEA supports a uniform cents/kWh charge capable of raising $128 million per year, with flexibility granted to the administrator to spend more or less than this amount in any given year as needed to maximize effectiveness of the fund. Testimony/Bailey, at 16.

DRA recommends that the rate used to recover the $106.2 million be the same, $0.00159/kWh, for all electric ratepayers after a phase-in period. Rebuttal Testimony/Nichols, at 4. DRA states that, similarly, a rate of $0.0063/therm should be phased in to collect the $22.1 million that gas company customers would have to pay under its proposal. Id.

PSE&G asserts that the allocation of additional spending should be done in a way that results in the same spending rate on existing and new programs on a cents per unit of energy basis for all electric ratepayers and for all gas ratepayers. PSE&G Initial Brief, at 6. However, if the Board decides the disparity is currently too great, PSE&G recommends the Board try to achieve parity in the shortest time possible. Id. PSE&G asserts that the utilities will likely argue this will cause rate impacts and increasing deferred balances for the electric utilities over the rate cap period and that the Board should be cognizant of these concerns. PSE&G Initial Brief, at 7. However, PSE&G argues that the Board should not fund a utility's equitable share through other utilities' ratepayers. Id. PSE&G further asserts that any deferred under-recovery resulting from this equitable spending rate can and should be recovered at a later time. Id.

PSE&G asserts that it has the highest electric DSM cost recovery because of its prior commitments and the resulting large under-recovered balance (approximately $130 million). Id. PSE&G asserts that when it has recovered that balance, its DSM rate should be lowered to a level on parity as outlined above. Id. PSE&G further asserts that this unrecovered balance must be eliminated at least by 2003 so that PSE&G's SBC rate can be put on par with the statewide average as the fourth year 14% rate discount expires. PSE&G Initial Brief, at 8.

PSE&G argues that each of the parties has its own interpretation of the Act regarding funding and allocation that supports its own interests. PSE&G Reply Brief, at 1. PSE&G asserts that unlike the other parties, it considers the funding level a matter for the Board to determine, and merely asserts that whatever the Board decides is the statewide level, that it be allocated in an equitable manner to each of the utilities and their ratepayers. Id. Allocation of funding most importantly needs uniformity. PSE&G Reply Brief, at 2.

PSE&G asserts that although the DRA argues for parity on a cents per unit energy basis for electric ratepayers and separately for gas ratepayers, it is inadequate because it is only for new programs. PSE&G Reply Brief, at 3. PSE&G asserts that it should also be for ongoing costs from existing programs, including standard offer. PSE&G Reply Brief, at 4. PSE&G argues that the DRA's conclusion that this would shift cost responsibility away from PSE&G ratepayers is incorrect. Id. Rather, it would allow other utilities' ratepayers to approach the large funding commitment already being made by PSE&G customers by increasing the percentage of new programs being funded by other utilities' ratepayers. Id. PSE&G's own ratepayers would continue to pay for the Standard Offer. PSE&G Reply Brief, at 5. PSE&G further asserts that a larger than proportionate share of new program funding allocated to a particular utility will directly benefit that utility's customers and therefore should be paid for by that utility's ratepayers. Id.

PSE&G argues that it has not proposed to reduce spending; spending would continue on existing commitments and be expanded for new programs. Id. However, PSE&G argues that it is appropriate for other utilities to fund a higher percentage of new programs to achieve a more uniform level of spending for all utilities in the state and it has not proposed to include collection of past under recoveries or lost revenues in this calculation. Id. Therefore, it does not result in shifting costs away from PSE&G ratepayers as alleged by the DRA.

NRDC supports correcting the disparity in funding levels among utilities by increasing the funding of utilities spending less. NRDC Initial Testimony, at 5.

RECO asserts that the Board should consider funding proposals on the basis of each utility's circumstances, because SBC rates have been fixed for the next four years. RECO argues that each utility is subject to different past commitments that have been approved by the Board and the ultimate goal of the Act is reduced rates. RECO Initial Brief, at 19. RECO asserts that the DRA's proposed $0.00159 /kWh would recover six times RECO's current recovery rate. RECO Reply Brief, at 2. Even with DRA's proposed phase-in, RECO argues that its ratepayers would face a four-year deferred balance of $4.2 million. Id. RECO already has a deferred balance of $3 million, which will not be fully recovered in the next four years. Id. RECO asserts that PSE&G grossly distorts the disparity among the utilities by including standard offer recovery for itself but not other utilities. Id.

The Independent Gas Utilities argue that nothing in the Act supports a uniform SBC rate. IGU Initial Brief, at 13. The IGU asserts that the DRA's proposal would double Elizabethtown's spending and quadruple it for South Jersey Gas, resulting in steep rate increases for their customers. Id. The IGU assert that the DRA submitted no evidence to show that ratepayers would benefit from increased spending. Id. The IGU further argue that PSE&G's proposal to allocate responsibility for funding based on gas sales is self-serving and would shift Standard Offer program costs to other utilities' ratepayers. IGU Reply Brief, at 3, 4.

GPU Energy asserts that PSE&G's proposal to calculate the allocation after including existing standard offer payments of $83 million, would result in an unfair allocation, placing most of the burden of funding new efficiency and renewable programs on the other utilities, regardless of the initial funding level established. IGU Reply Brief, at 7. GPU requests the Board allocate the funding on the basis of new programs alone. IGU Reply Brief, at 9.

4. Components of programs

DRA asserts that direct and indirect costs for new programs should be paid for with these funds. DRA Initial Brief, at 14. DRA states that these funds should not be used for any costs from any past programs, including costs that are due in the future from past programs. Id.

NRDC argues that the Board should exclude the cost of load control programs and transmission and distribution system lost revenues from the calculation of new program expenditures. NRDC Initial Testimony, at 5. It points out that those costs can be justified by market benefits and thus do not meet the statutory requirement of Section 12 (a)(3). NRDC Initial Testimony, at 5.

B. Administration

1. General positions

DRA recommends an independent statewide administrator for disbursement of renewable energy funds as most other states have done. DRA Initial Brief, at 27. DRA asserts that utilities are unsuitable to administer these funds because they have a history of high administrative costs and because the goals of both energy efficiency and renewable energy are not in the utilities' shareholders interest. DRA Initial Brief, at 28.

DRA recommends that the Board establish an advisory committee consisting of representatives of ratepayers, renewable energy industries, academic institutions, and government agencies to provide policy guidance to the Board and the ISA. DRA Initial Brief, at 30. DRA asserts that the

Board should appoint the Office of Sustainable Business as interim ISA. Direct Testimony/Nichols, at 9.

For the same reasons, the DRA does not support utility administration of energy efficiency programs. DRA Initial Brief, at 28. DRA recommends that the Board conduct a formal proceeding to determine how energy efficiency programs should be administered, and that the utilities continue to administer these programs only until the Board makes a decision. DRA Initial Brief, at 29. DRA states the utilities should be nothing more than collection agencies for funds to be spent on energy efficiency and renewable energy programs. Id.

The DRA asserts that utilities have failed to show why a renewable energy trust fund should not be adopted by the Board. DRA Reply Brief, at 15. DRA asserts that PSE&G is wrong that the Act is unclear on the issues of funding and administration and that these issues are in the Board's Order. DRA Reply Brief, at 16. The Act enables the Board to make this very decision. The DRA argues that the factual record supports using a statewide administrator. DRA Reply Brief, at 17. DRA asserts that the utilities have not proven that they are best able to administer renewable energy funds. Id. DRA asserts that the utilities have produced no facts that support utility administration. Utility experience in having implemented DSM programs is not sufficient to prove otherwise. DRA Reply Brief, at 18. Additionally, DRA disagrees with utilities in their claim that they have no burden of proof. Id. The requirement to file in this proceeding imposes upon them a burden to prove whatever they file. Finally, according to the DRA, no other party except NRDC supports utility administration. Id.

RECO asserts that the Act does not mention administration and that the utilities have experience in administering successful DSM programs. RECO Reply Brief, at 13. Existing accounting procedures are adequate to track funding and are consistent with the SBC mechanism. RECO Reply Brief, at 14. Utilities will cooperate through their proposed Advisory Council. RECO Reply Brief, at 14. An ISA and a trust fund would create additional bureaucracy. RECO Reply Brief, at 16. Restrictions on utility affiliates entering the efficiency and renewable energy markets are not referenced in the Act and would impede the vigorous regulatory goal of a competitive market. RECO Reply Brief, at 16.

The Independent Gas Utilities assert that an ISA is unnecessary. IGU Ex. MM2, at 30. The Independent Gas Utilities' CRA plan demonstrates that they can provide a uniform statewide program. Id. The IGU assert that the Board is capable of monitoring the effectiveness of utility administration and there was no evidence that an ISA could save money on administration. IGU Reply Brief, at 6. The IGU assert that the gas utilities' experience in DSM programs would enable the Independent Gas Utilities to administer both renewable energy and energy efficiency programs. Id. The IGU argue that the utility industry has been at the forefront of renewable energy activities such as research and development, installation of demonstration sites and pilot testing. Id. The IGU assert that there is no existing entity with experience administering a renewable energy program. Id. The IGU assert that the intervenor parties have not demonstrated that a trust fund is needed, nor does the Act contemplate it. IGU Reply Brief, at 10. The IGU further argue that the utilities already have in place Board supervised accounting systems and that the Board is well qualified to assure that there are no conflicts of interest that would inhibit the development of the renewable energy industry. IGU Reply Brief, at 12.

NJPII supports appointment of an ISA for renewable energy programs. NJPII Reply Brief, at 4. An ISA rather than utility administration will avoid obvious opportunities for conflict of interest such as promotion of utility affiliates and use of funds to promote utility identity. NJPII Reply Brief, at 7. NJPII lists several areas where conflict of interest already exists if utilities should be both administrators and implementers. Id. Separation of the functions would establish a level playing field for equal competition and assist in development of competitive and diverse renewable energy markets. Id.

NJPII points out that the renewable program should foster development and installation of distributed generation resources. Id. NJPII asserts, however, that such an effort is in direct competition with utility interests and while the Board expects to monitor inter-affiliate transactions and sanction violations, it is time consuming and expensive to watch over such actions, and violations are only sanctioned after abuses occur. Id. With an ISA, NJPII argues that utility affiliates will be able to pursue legitimate business interests without the taint of real or perceived conflicts of interest. Id.

NJPII supports establishment of an Oversight Committee comprised of stakeholder representatives to provide policy and technical guidance on renewable energy programs. Initial Testimony/Smeloff, at 27. Committee representatives should be from renewable energy industries, distribution utility companies, the Department of Environmental Protection, the Office of Sustainable Business, the DRA, and public interest and environmental organizations. Initial Testimony/ Smeloff, at 28.

NJPII lists and describes several criteria for the Independent Statewide Administrator: mission, independence, accountability, accessibility, efficiency, flexibility in program implementation, coordination and cooperation with other state agencies, and expertise in the area of renewable energy development. Initial Testimony/Smeloff, at 29.

NJPII lists the inherent limits and limited ability of utilities to meet these criteria and lists the total results of utility renewable programs as seven PV installations, two fuel cells, one solar water heater, four studies, two classroom presentations and a seminar. NJPII supports limiting costs for program administration to 5% of total program costs. Initial Testimony/Smeloff, at 32.

AWEA also asserts that costs for administration of the fund should be limited to 5% of the overall funding level. AWEA Initial Brief, at 2. AWEA opposes utility administration of SBC funds because large-scale renewable energy resources are unevenly distributed and would be difficult to develop based within service territories. AWEA Initial Brief, at 12. In addition, utilities and their subsidiaries will be better able to compete for access to the funds if they are not simultaneously engaged in fund administration. Id.

AWEA asserts that the fund administrator should have freedom to entertain proposals and make awards that include the full range of financial support options, including production incentives, loan guarantees, consumer incentives, price supports, capital cost sharing, low cost financing, in order to ensure the broadest range of participation and most innovative proposals. AWEA Reply Brief, at 8.

AWEA supports appointment of an ISA to manage the Renewable Energy Fund. AWEA Reply Brief, at 4. AWEA supports management of the SBC funds guided by an advisory committee of

individuals with knowledge and experience of the full range of renewable energy technologies. AWEA Reply Brief, at 4.

EDF asserts that an auction program is needed, administered by an ISA and open on an equal, competitive basis to all potential applications nationwide. EDF Initial Brief, at 7. EDF asserts that the utilities should be allowed to bid, but should be treated like all other bidders. Id. EDF asserts that allowing the utilities to administer the renewable funds would frustrate the policy declaration in EDECA. Id. However, EDF suggests that it is a more practical method to establish the utilities as temporary administrators of the renewable program for the first year, until an ISA can be established. Initial Testimony/Patasaw, at 7. EDF prefers an entity other than the BPU. It asserts that if the administrator is located in the BPU, but is given independence, that would be acceptable. EDF Initial Brief, at 8.

EDF disagrees with the utilities' arguments that utilities should retain the SBC revenues until spent. Id. EDF asserts that this is not just an issue of lost interest income to the ISA, but one of putting the utilities in a position to control the fund size and manner in which revenues are spent. Id. EDF states that, "Every decision would be subject to further discussion and negotiation with the BPU." Id.

The ESCO Intervenors take the position that an ISA is needed for both energy efficiency programs and renewable energy programs. NAESCO Initial Brief, at 47. The ESCO Intervenors assert that an Advisory Committee should be established to design the programs. NAESCO Initial Brief, at 49. Trust funds should also be established. Id.

Conectiv argues that the individual utilities should administer both the renewable and energy efficiency funds for their own service territories. Conectiv Initial Brief, at 19. Conectiv asserts that the parties that have proposed a specific state office be the administrator have proposed no specifics as to the statutory or regulatory authority enabling that office to oversee spending or the mechanics of how the administrator would operate. Id. Conectiv asserts that it and other utilities have made it clear that they can administer the funds efficiently and appropriately and that the record shows that Conectiv can work cooperatively with other parties and utilities. Id. Conectiv asserts that the record clearly supports Conectiv as the administrator of its own programs. Id.

Additionally, Conectiv asserts that the witness for NRDC believes the utilities can administer the programs and cites testimony, which states that the utilities know their customer base and have a reputation in the market, and that it would be a trade-off between administrative costs and utilities' familiarity with the issues. Conectiv Initial Brief, at 21.

GPU asserts that the Act does not address the issue of administration, however the extensive experience, existing infrastructure and ongoing accountability to the Board strongly support the utilities as administrators and obviates the need for a trust fund. GPU Initial Brief, at 19. GPU asserts that none of the various parties' proposals addressed adequately the issue of costs associated with initiating a statewide administrator. Id.

GPU asserts that NRDC testified that time and efficiency would be lost in shifting to a statewide administrator. GPU Initial Brief, at 20. GPU asserts that the Board should allow the continuation of the existing infrastructure for the administration of the energy efficiency and renewable programs to maximize funding and minimize administrative costs. Id. GPU further asserts that the utilities

already have established procedures to report to the Board and are subject to stringent regulatory oversight. GPU Initial Brief, at 21.

Additionally, GPU asserts that the utilities filed their plans based on the assumption that they would administer and implement the programs. Id. GPU asserts that the electric utilities provided a description of the areas of statewide coordination and areas where further coordination will be explored. GPU Initial Brief, at 22. GPU asserts that the utilities should not be denied responsibility for administration unless and until the Board determines they have not performed adequately in this regard, and this has not been supported by this record. Id.

GPU asserts that the future adoption of competition standards by the Board makes parties' concerns about conflicts of interest a moot point. Id. GPU asserts the DRA and NJPII have been the strongest proponents of a statewide administrator, but their concern is unwarranted given the Act's requirement for such standards. Id.

GPU asserts that its status as a Basic Generation Service (BGS) provider, in combination with the Renewable Portfolio Standards (RPS), are sufficient to support development of a robust market for renewable energy supply. GPU Initial Brief, at 23. GPU asserts that Mr. Smeloff for NJPII and Dr. Nichols for the DRA agreed that adequate renewable energy supply will benefit all electric suppliers given the New Jersey requirements for RPS. Id.

GPU opposes the creation of a statewide trust fund because of the potential for cross-subsidization of a utility's customers by another utility, which it asserts is inappropriate and harmful to customers of utilities who have historically aggressive Demand Side Management programs. GPU Initial Brief, at 24. GPU asserts that Dr. Nichols' opinion that energy efficiency funds should be distributed in the first four years on a dollar for dollar basis to the same service territory also applies to renewable funds and should continue as long as funds come from ratepayers. GPU Initial Brief, at 25. Additionally, GPU asserts that if the funds are going to be distributed in this manner, there is no need for a trust fund. GPU Initial Brief, at 24.

GPU asserts that no evidence was presented by any other parties supporting a trust fund as preferential to existing utility accounting methods, and that NRDC agreed that a trust fund is unnecessary to maintain the integrity of uncommitted funds. GPU Initial Brief, at 25. GPU urges that the Board permit distribution of SBC funds, collected from a utility's customers, directly to customers in that service territory. GPU Initial Brief, at 25.

GPU asserts that the argument made by some parties that the SBC is like a sales tax is flawed because it is not a tax. GPU Reply Brief, at 11. GPU argues that had the Legislature wanted the SBC to be a tax they would have created it as such. Therefore, it cannot be used as the basis for justifying a statewide administrator. Id. GPU further asserts that the Legislature did not mandate a proceeding to set up a trust fund or to establish a statewide administrator. GPU Reply Brief, at 12. GPU asserts that it is an experienced and effective administrator and should continue as administrator. Id.

GPU asserts that none of the parties provided any evidence in the record to support establishing a statewide administrator. GPU Reply Brief, at 13. GPU states that NJPII's argument that the utilities only have two or three years experience with renewable programs and therefore a newly established administrator should be given the responsibility, is flawed because this administrator

would have no experience. Id. GPU asserts that the DRA could not recommend an appropriate administrator and recommended another proceeding to accomplish this, even though the DRA asserted there was ample supporting evidence in the record. Id.

GPU asserts that the record contains no evidence regarding participation by market players being deterred by utility administration other than GPU Energy's testimony refuting any such claims. GPU Reply Brief, at 14.

GPU argues that the DRA's assertion that the administrative overheads of the New York State Energy Research and Development Authority ("NYSERDA") would be an appropriate standard for this state is inappropriate because it is not clear what is included in those costs and it is therefore not accurately comparable to the utilities' overheads. GPU Reply Brief, at 15. Additionally, the significant costs to establish a statewide administrator could legitimately be considered an administrative overhead. Id. Both Mr. Siebens of GPU and Mr. Schirra of PSE&G testified that a universal cap could not be applied to energy efficiency or renewable energy programs because depending on the type and design, programs need varying degrees of administrative support including contractor and in-house costs. GPU Reply Brief, at 16.

PSE&G asserts that no party made a real proposal regarding the organization and operation of a statewide administrator, nor did any of them provide proof that such an administrator would be more effective or result in lower administrative costs. PSE&G Initial Brief, at 8. PSE&G further asserts that the utilities have a proven track record of administering programs, with expertise in both administrative and technical issues, and assessing and managing implementation issues. Id.

PSE&G asserts that the legislation is silent on administration. PSE&G Initial Brief, at 9. According to PSE&G, the utilities have customer and market information with easy customer access, and that each utility's plan contains a detailed proposal for administration and assumes the utility as the administrator. Id. PSE&G asserts that NRDC supports this view by stating that utilities have experience working with their customers and that tradeoffs exist between administrative cost savings and this track record. Id. PSE&G also asserts that NRDC feels valuable time would be lost in the transition to an independent administrator. Id.

PSE&G further supports its position by asserting that utilities are already subject to regulatory oversight, have existing competitive procurement practices, and contracted service standards. Id. PSE&G asserts that the utilities realize coordination and joint implementation is necessary. PSE&G Initial Brief, at 10.

PSE&G asserts that parties in support of an independent administrator supported their argument with the fact that it has been done in other states, particularly New York. Id. PSE&G asserts that this argument is flawed because the New York legislation mandated administration by NYSERDA, which was an existing authority with a history of energy related research and development. Id.

Regarding the DRA's argument that historically the utilities have had high administrative costs and that this was demonstrated at the hearings, PSE&G asserts that although significant time was spent on the subject, most of the testimony was unsubstantiated opinions about potential costs and appropriate levels of these costs. Id. PSE&G asserts that the allegation that it is not willing to determine administrative costs is unfounded, and that it provided those costs, which showed that they were not high. Id. PSE&G further asserts that no intervenor demonstrated in the record that

lower administrative costs would result from an independent statewide administrator, nor did any entity ask for the job of administrator. Id.

PSE&G asserts that although the DRA claims that utility coordination would be a good, but costly idea for the seven utilities, and that a statewide administrator would not have these multiple costs, the utilities have shown how this coordination can be achieved and costs kept low. PSE&G Reply Brief, at 7.

According to PSE&G, the DRA asserts that renewable funds should be distributed through a renewable trust fund because it will take time to ramp up for renewable projects, the monies will not all be spent in the beginning, and it is possible that spending will need to extend beyond the eight years. PSE&G Reply Brief, at 9. PSE&G asserts that this would add another administrative burden to the Board's responsibilities to establish and monitor a new entity and that the utilities' already established deferred accounting practices address both of the DRA's concerns. PSE&G Reply Brief, at 10.

NRDC proposes minimum requirements that program administrators must meet: (1) adhere to the affiliate guidelines adopted by the Board; (2) establish the program by January 1, 2001; (3) meet no less than 80% of target values for performance criteria; (4) file timely program plan updates and evaluation reports; (5) incorporate results of program evaluation; (6) maintain statewide consistency; and (7) properly and adequately staff and implement programs. NRDC Initial Testimony Att. II, at 7.

2. Trust fund

DRA recommends against phasing in funding for renewable energy projects, instead depositing the collections in a Renewable Energy Trust Fund under the control of the State Treasurer. DRA Initial Brief, at 18. This would, DRA states, ensure that these funds are spent only on renewable energy projects. Id, at 19.

NJPII supports establishment of a Renewable Energy Fund, which would collect 25% of the SBC dollars. Testimony/Smeloff, at 27. NJPII opposes deferred accounting to track spending on these programs on the grounds that there is no assurance that those funds will be spent on renewable energy and because the statutory entitlement to a specified amount of incentives will be lost. Rebuttal/Smeloff, at 5. NJPII points out that one utility has specifically proposed to use unspent funds for other purposes. Rebuttal/Smeloff, at 6. NJPII asserts that any diversion of SBC dollars from the allowed applications as set out in Section 12(a)(3) of the Act directly contravenes the statute and should not be sanctioned by the Board. Rebuttal/Smeloff, at 6.

Mr. Smeloff asserts that the establishment of a Renewable Energy Fund for 25% of collected SBC dollars for new programs on an annual basis would act as a guarantee that the mandated level of dollars would be collected, reserved, and ultimately spent on renewable energy programs and projects. Testimony/Smeloff, at 27. Mr. Smeloff points out that a fund would accommodate greater amounts of dollars flowing to projects in later years when the renewable energy industry has expanded and can utilize greater amounts of funding. Rebuttal/Smeloff, at 6. Mr. Smeloff asserts that a fund would ensure renewable energy developers of the availability of the full amount of dollars when the market expands. Rebuttal/Smeloff, at 7. Mr. Smeloff further asserts that a growing fund would be better able to support the emergence of worthwhile projects because

project financing is likely to be very time sensitive. Id. Mr. Smeloff asserts that unspent funds may be held in an interest bearing account, further enhancing the fund. Id.

PSE&G asserts that all of the issues before the Board are policy issues not factual ones and there is no requirement for the Board to make a strict finding of facts. PSE&G Initial Brief, at 2. PSE&G asserts that the utilities' responses, testimony, market assessment, and plans all have to be considered by the Board jointly. Id.

PSE&G asserts that Section 2 of the Act establishes underlying policy principles of the legislation with the key principle being decreasing the cost of energy and continue energy efficiency and load management as part of the strategy to meet long-term energy needs. PSE&G Initial Brief, at 3. PSE&G asserts that no witness challenged this as the primary objective, and that NJPII did not examine the rate impacts of their recommendations. PSE&G Initial Brief, at 4. According to PSE&G, the Board must first establish the statewide funding level and then the allocation among the utilities. Id.

GPU argues that the DRA's assertion that costs to customers are increased by the application of SBC over recoveries to Freehold buyout costs is groundless and in fact only benefits customers. GPU Reply Brief, at 9.

C. Program Design

1. Renewable programs

The DRA proposes that 60% of renewable funding be allocated to emerging technologies such as photovoltaic, small wind, fuel cells using renewable energy, geothermal, etc. DRA Initial Brief, at 41. Class I renewable technologies, excluding landfill gas to energy projects, the DRA argues should receive 30% of funding. Id. DRA asserts natural gas fuel cells should not be funded by SBC money. DRA Initial Brief, at 42. The DRA asserts that NRDC's proposals for renewable energy are inadequate because the buy down rates are too low and did not distinguish technologies by size and that EDF's proposal is better. DRA Reply Brief, at 32.

NJPII asserts that only statewide programs can ensure development of equal market opportunities and that a unified, statewide program will foster development of a renewable energy industry. Testimony/Smeloff, at 40. NJPII asserts that fragmentation of programs among utility distribution service territories will destroy markets and limit renewable supply options because it will provide artificial boundaries that do not match renewable resources, particularly for wind and biomass. Testimony/Smeloff, at 25.

NJPII further asserts that uneven funding levels and disbursed program administration will give some utility customers better access to renewable energy programs over others. NJPII Initial Brief, at 31. NJPII points out that distributed, or customer-side technologies can have positive benefits for the local transmission and distributions system, mostly in the form of avoided system upgrades. Id.

NJPII asserts that certain proposals will direct funds only to specific technologies, and will result in new or expanded markets for fossil fuels, and will directly support utility affiliates. NJPII Initial Brief, at 32. NJPII asserts that SBC dollars for renewable technologies should support those technologies that are emerging. Testimony/Smeloff, at 8. NJPII asserts that the RPS will support

those near market technologies that will not necessarily require direct financial incentives such as landfill methane and large fuel cells. NJPII Initial Brief, at 34. NJPII argues that limited SBC dollars should not be spent to subsidize utility RPS requirements at the expense of other emerging technologies. Id.

NJPII opposes any use of SBC monies to support technology applications that use fossil fuels. NJPII Initial Brief, at 35. NJPII specifically suggests differentiating the incentives for fuel cell projects based on the proposed feedstock fuel to be used. Id. NJPII bases this proposal on the Section 12 intention to foster development of programs providing environmental benefits above and beyond those achieved by prior programs. NJPII Initial Brief, at 36. NJPII points out that support of fossil fuel use could actually lower environmental benefits, in contravention of the legislative mandate. Id.

NJPII supports allocating 40% of the Renewable Energy Fund to foster development of grid-connected projects, 40% to market development and direct incentives for small technologies, and 20% toward development of an in-state renewable energy infrastructure. Initial Testimony/Smeloff, at 11. NJPII supports providing for an assessment of the State's wind resources on land and offshore from the 40% funding for large-scale projects. NJPII Initial Brief, at 42.

NJPII suggests that the program administrator award incentives through competitive solicitation such as a Request for Proposals or Program Opportunity Notice, based on several attributes. Id. NJPII asserts that funding could be in the form of production credits on power produced, direct project development grants, low or zero interest loans, or a combination of the above. Id.

NJPII suggests customer side incentives in the form of credits on customer bills to promote increasing sales of renewable energy products. Initial Testimony/Smeloff, at 14. NJPII suggests a buy down program for small-scale renewable projects that would be divided into tiers with incentive levels reduced over time. Initial Testimony/Smeloff, at 17. NJPII suggests allocations for small, medium and larger systems to encourage a variety of systems. Initial Testimony/Smeloff, at 18.

NJPII suggests that support for a renewable energy industry infrastructure is necessary. Initial Testimony/Smeloff, at 19. This support would include research, development and demonstration. NJPII Initial Brief, at 48. NJPII suggests it include program incentives for economic development, product development, professional training, certification and public education programs. NJPII Initial Brief, at 49.

AWEA proposes support for large-scale wind energy development through a competitive solicitation or auction process. AWEA suggests 40% or $13 million annually of the fund be used for large-scale renewable projects. AWEA Brief, at 11. This would provide production incentives and consumer incentives for wind, biomass, and non-fossil fueled fuel cells. AWEA Brief, at 10. AWEA proposes that support for large-scale wind be provided in a manner that allows developers to also take advantage of the federal production tax credits that will sunset December 31, 2001. AWEA Brief, at 13. AWEA lists the multiple financial benefits of wind development, including direct and indirect employment, increased property taxes, increased sales taxes, and lease payments and/or royalties to landowners that host wind farm development. AWEA Brief, at 6.

AWEA proposes support for small-scale wind generators by a standard incentive designed to buydown the initial equipment and installation costs of small systems. AWEA Brief, at 4. It

suggests 40% of the fund be for small-scale renewable projects, small wind and solar systems 100 kW or less. AWEA Brief, at 11. AWEA recommends the fund provide a buydown with declining incentives, as in California. AWEA Brief, at 10. It further recommends an incentive level of $4/watt, up to a limit of 70% of capital costs until 10 MW of cumulative generation is acquired. Id. AWEA suggests the next step at $3/watt would continue until an additional 20 MW of capacity is installed. Id. AWEA would also offer consumer incentives. Id.

AWEA proposes that the SBC support R&D to carry out an assessment of wind energy potential including a wind-mapping. AWEA Brief, at 11. AWEA suggests the results be provided in a publicly accessible database and an assessment of potential for off-shore wind energy development. Id. AWEA proposes that 20% of the fund be used for research, development and demonstration, education, training, certification programs and administrative costs. AWEA Brief, at 10.

EDF asserts that funds for renewable projects should be allocated to obtain the most technologies operating at the end of the eight-year period. EDF asserts that both large-scale and small-scale renewable technologies need incentives to become competitive. EDF Initial Brief, at 9.

EDF's testimony emphasizes the auction for large-scale technologies. However, they are also proponents of the auction for small-scale technology. EDF Initial Brief, at 1. EDF asserts that the Act favors competition and that a technology neutral auction is the best way to promote competition. EDF Initial Brief, at 2. Additionally, because the Act has an eight-year duration, it is reasonable to promote technologies that could achieve market competitiveness within the eight years. Id.

According to EDF, the important attributes of a technology neutral auction are compatibility with retail competitive markets, efficient use of limited funds, and administrative efficiency. EDF Initial Brief, at 3. An auction also promotes a transition to a self-sustaining renewable industry and effectively develops renewable energy within strict cost limits. Id.

EDF proposes periodic auctions over several years beginning after the first year with funds distributed on a per-kilowatt-hour production credit based on actual generation from new renewable projects. Id. EDF proposes periodic auctions to address the fact that some renewable technologies are more mature than others and to allow participation of other technologies as they become more mature during the eight-year period. EDF Initial Brief, at 4. EDF cites this as the reason to postpone the initial auction. EDF Initial Brief, at 5.

EDF also asserts that currently, market competitive technologies should not be supported by the SBC, but should be used by the utilities to comply with the RPS. EDF Initial Brief, at 4. SBC funded industries should not be used to fulfill the RPS, while there are near market-price renewable options in the regional marketplace. Id. Additionally, EDF asserts that fuel cells powered by natural gas should not be funded by the SBC even though they are included in the Act as a Class I renewable because natural gas is not a renewable resource, and will not help to achieve independence from fossil fuels. Id. EDF recommends only 10% of the SBC funds go to fossil fueled fuel cells. EDF Initial Brief, at 6.

EDF suggests that, if properly designed, there are other types of auctions that could promote competition, specifically the Program Opportunity Notice (PON) mechanism, which is used in New

York. EDF Initial Brief, at 5. In this process the program administrator allocates a portion of the SBC funds to the category of renewables and restricts the auction to that category or technology. Id. EDF recommends funds still be distributed as a production credit on a per kWh basis for generation if a PON is used. Id.

EDF proposes to allocate SBC funds as follows: 40% of the funds to technology-neutral periodic auctions, 30% of the funds to a PON auction including a 10% set-aside for natural gas powered fuel cells, and the remaining 30% to an auction of either type, but restricted to small-scale projects eligible for the buy down. EDF Initial Brief, at 6.

NRDC recommends direct financial incentives, for first cost buy down, of customer-side projects, which would decline over time. NRDC Green Testimony, at 8. NRDC supports, for grid supply resources, which it defines as primarily biomass and large wind, direct financial incentive in the form of production credits and suggests that the best way to deliver such an incentive is through an auction program. NRDC Green Testimony, at 8. NRDC supports funding demonstration projects through loans and grants and market development programs such as financing and technical assistance. NRDC Green Testimony, at 9. NRDC supports allowing flexibility in spending in any one year, so that over the period 2000-2007 the total funding will reach 25% of the total allocated. NRDC Initial Brief, at 18. NRDC supports implementation of renewable energy programs on a statewide basis. Id.

Conectiv asserts that it has proposed renewable programs, which provide environmental benefits above those provided by the standard offer or similar programs as required by the Act. Conectiv Initial Brief, at 13. Conectiv asserts that its program design was developed in a cooperative process with other electric utilities. It has proposed a buydown program, which is not technology specific. Conectiv Initial Brief, at 16.

PSE&G asserts that its programs should be approved as filed with a requirement that it submit a compliance filing which will detail the budgets for each program after the Board decides the spending level. PSE&G also recommends that the Board establish working groups if further alignment of programs is necessary among the utilities. PSE&G Initial Brief, at 12.

RECO asserts that nothing in the Act allows excluding the gas companies from funding renewable energy, and fuel cells are a specified renewable technology. RECO Initial Brief, at 33. The Act does not preclude utilities from fulfilling the RPS obligations with SBC funded renewable energy sources, and to do so would thwart "market pull" forces. Id.

The Independent Gas Utilities state that the Act specifically includes fuel cells in the definition of Class I renewable energy with no distinction as to fuel. Marks Rebuttal Testimony, at 10. The IGU assert that natural gas fuel cells, in fact meet five of the expressed Legislative objectives of the Act (1,2,7,9,11). Id. The IGU argue that natural gas fuel cells should be treated as any Class I resource. Marks Rebuttal Testimony, at 11. Mr. Marks asserts that natural gas fuel cells will provide an infrastructure for other fuel cell fuels when they become available. Marks Rebuttal Testimony, at 10. Mr. Marks asserts that other parties do not oppose the buydown concept. Id.

2. Energy efficiency programs

DRA proposes that underserved markets receive 40% of energy efficiency funds because about

40% of electricity sales are to the residential market and small commercial enterprises in older urban areas. DRA Brief, at 44. DRA also states: "A minimum of this 40% should be allocated to low-income energy efficiency services, which should not be less than 0.2% of total retail electric revenues." DRA Brief, at 45. DRA suggests that technology based market transformation, including efficient equipment and construction practices for all markets should be allocated 40% of funds. Id. DRA supports 10% for energy services facilitation, which would benefit large industrial, commercial, government and institutional customers. Id. DRA also supports another 10% of funding for research, development, monitoring and evaluation. Id. According to the DRA, gas funding should be allocated using the same guidelines. Id.

DRA asserts an extensive on-site audit program with direct installation for residences and small businesses should be included. DRA Brief, at 46. Audit contractors' payments should be performance based. Id. DRA asserts there should be a low-income program modeled after PSE&G's E-Team Partners, which is a direct installation program that includes energy related behavior counseling and energy bill arrearage forgiveness. DRA Brief, at 48. DRA argues that nearly all of the 40% allocation proposed for underserved markets should be spent on these programs. Id.

For market transformation programs, DRA endorses the approach used by PSE&G for heating, cooling and water heating. DRA Brief, at 49. DRA recommends a motor efficiency program developed by the Energy Center of Wisconsin. DRA Brief, at 50. For advanced efficiency practices in new building construction, DRA expresses admiration for the programs used in California by Pacific Gas & Electric Company and San Diego Gas & Electric Company. Id. DRA believes 40% of the market transformation budget should be spent on these four areas. Id. DRA believes a program should be created to facilitate performance contracting between users and energy service companies. DRA Brief, at 51. DRA asserts that air conditioning cycling should be continued, but should be moved to the competitive market. DRA Brief, at 52.

DRA states that NRDC submitted its program proposals after the hearing and so have not been subjected to the due process examination. DRA Reply Brief, at 34. DRA believes some of NRDC's proposals are useful, but not as useful as the proposals by DRA. Id.

Conectiv asserts that it has proposed energy efficiency programs, which provide environmental benefits above those provided by the standard offer or similar programs as required by the Act. Conectiv Initial Brief, at 13. Conectiv additionally asserts that this language in the Act has been the subject of debate, but that the meaning is simple. Id. New programs will provide these benefits because they incur energy savings beyond those already achieved, and that these additional energy savings result in environmental benefits by avoiding the pollutants that result from power generation. Id, at 14.

Conectiv asserts that the Act provides guidance to the Board for program selection, specifically that programs should transform markets, capture lost opportunities, provide more affordable energy to low-income customers and eliminate subsidies for programs that can be delivered by the market independently. Id. Conectiv asserts that its plan complies with these guidelines and should be approved as filed. Conectiv Brief, at 15. Conectiv asserts that its new filing is based on a modification of its current plan, reflecting program experience. Conectiv Brief, at 16.

Conectiv asserts that many of its programs are market transformation programs. Conectiv Brief, at 17. It proposes to continue its low-income program. Id. The Home Energy Savings Program, which is a residential audit, it asserts also addresses low-income customers along with other residential customers. Id. For commercial customers, it proposed to continue its energy efficient new construction program. Id.

ESCO Intervenors recommend that standard offer type programs be used for 45% of the funding and that twenty-five percent of that should be directed to low income. ESCO Initial Brief, at 52. Direct payment for installation should be used for 55% with the programs being designed by the ISA. ESCO Initial Brief, at 53.

The ESCO Intervenors state that the utilities admit they did not design their programs based on the CRA. Id. The Board should follow the ESCO Intervenors recommendation to convene a collaborative process to design the programs, which should be results based programs, not the process based programs the utilities have proposed. ESCO Reply Brief, at 7. The ESCO Intervenors argue that standards for program design should be based on legislative intent, experience from other states, and the record evidence that results based programs will actually achieve energy savings and environmental benefits above current programs. Id.

The ESCO Intervenors assert that the utilities assume the legislature does not care whether the programs would actually achieve energy savings and environmental benefits, but that this is wrong. Utilities offer no evidence that their programs would achieve either. The ESCO Intervenors assert that RECO is incorrect in claiming the Legislature wanted to move away from Standard Offer programs. ESCO, Reply Brief, at 9.

The ESCO Intervenors assert that well-designed programs could have substantial environmental and economic benefits, but the utility programs are not well designed. Id. at 15. The ESCO Intervenors assert that adopting the utilities' proposals would defy the Legislature's intent and squander millions of ratepayer dollars. Id.

The ESCO Intervenors believe the Wisconsin Energy Conservation Corporation ("WECC") report supports continuation and refinement of performance-based programs, particularly Standard Offer. ESCO Reply Brief, at 16. A redesigned Standard Offer program is central to achieving all the purposes of the Act while maintaining a viable non-utility industry including the ESCO Intervenors. ESCO Reply Brief, at 17. They assert that GPU is incorrect in its statement that the WECC report does not find conflict between programs with measurable savings and programs that capture lost opportunities, transform markets and reduce energy costs for low-income consumers. Id.

Honeywell DMC asserts that none of the program arrays submitted in the CRA plans are approvable as filed because they meet neither the Legislature's criteria nor any reasonable regulatory standard for approval. Honeywell Initial Brief at 3.

Honeywell DMC asserts that the plans submitted by the utilities vary widely in their budgeting as a result of the funding uncertainty and that the assumptions used by various utilities are incompatible. Id. Honeywell DMC notes that GPU, in response to a discovery request from NAESCO, states that there "was little attempt to line up the programs with the outcome of the Assessment," because they were being prepared simultaneously. Id. Honeywell DMC argues that because of this, the program plans were not able to consider the results of the New Jersey

Statewide Assessment commissioned by the utilities and performed by Xenergy. Id. at 4.

Honeywell DMC argues that the presentation of specific program performance goals, benefits, and cost-effectiveness analysis are scant or non-existent in the plans. Id. Because of this lack of presentation in the CRA plans, Honeywell DMC asserts that there is no comparison of the programs selected to other options that may have been considered. Id.

Honeywell DMC asserts the plans do not adequately address existing small commercial and general residential customers. Honeywell Rebuttal Testimony, at 2. According to Honeywell DMC, the legislation did not eliminate subsidies where significant barriers remain. Honeywell DMC asserts these small commercial and general residential customers demand stronger programmatic attention and investment in order to reduce the market barriers affecting them. Id.

Honeywell DMC argues that the Board should remain concerned with ensuring equitable opportunities for all types of customers to share in program benefits. Honeywell Initial Brief, at 5. Honeywell DMC states that the Board Order should direct that customer equity be included as a policy consideration in the program plans, and that the proposed programs be revised to better address the market barriers present in the small commercial and general residential sectors, as well as in economically distressed communities. Id.

Honeywell DMC argues that the Board, prior to finalizing the plans, should first resolve the major funding and policy guideline issues in order for the program plans and budgets to be properly finalized and documented. Id. at 7.

Honeywell DMC argues that the Board Order should resolve threshold funding and policy issues, and establish a follow-up process for the revision and completion of program plans and budgets. Id. Honeywell DMC argues that the Board should establish a second-stage or compliance process concerning the specific program plans, to be conducted over a three to six month period. Id. at 8. Honeywell DMC further argues, the Board will not be in violation of the Statutory Deadlines in establishing a follow-up process for program plans and budgets following issuance of the Board's initial Order. Id.

NRDC emphasizes the importance of energy efficiency programs in reducing air pollutants that arise from the present types of electricity generation: nitrogen oxides; sulfur dioxide; carbon dioxide; and particulate emissions that result in the premature deaths of thousands of people. NRDC Initial Brief, at 14. NRDC asserts that efficiency programs must meet the statutory requirements of the Act to overcome market barriers, transform markets and make energy services more affordable. NRDC Green Testimony, at 7. To accomplish those goals, NRDC asserts that the programs must be consistent statewide. NRDC Initial Brief, at 16. It offers proposed budgets and minimum requirements. NRDC Initial Brief, at 16, Att.1.

NRDC proposes seven residential efficiency programs. For each program, all electric utilities would meet regularly to coordinate the development of a consistent program design and to ensure the program is implemented in a consistent fashion across the state. The programs recommended by NRDC are:

. Residential Appliance Program. This program would be available to all residential customers to encourage, through marketing, the purchase of Energy Star home

equipment, (refrigerators, clothes washers, dishwashers, room air conditioners, DVD, home audio, televisions/VCR combinations, and VCR's and six office equipment products. The program would provide financial incentives ($100) toward purchase of Energy Star clothes washers and ($300) toward purchase of suites of Energy Star appliances.

. Residential Efficient Lighting Program. It would promote Energy Star lighting products to residential and non-residential customers through marketing and brand awareness, sales training and point of sale customer incentives for screw-in lamps, hardwired fixtures, recessed cans and torchieres.

. Residential Electric HVAC Program. For any residential customer or builder purchasing a new central air conditioner or heat pump, the program goal would be to achieve a statewide market share of 10%. Other incentives would be for Energy Star thermostats and duct sealing.

. Residential Retrofit Program. It would apply to all individually metered customers with a primary target of 1-4 unit dwellings. It would provide consumer education and remote audit services at low or no charge. Estimated costs are $5 per unit for remote education services and from $8-$12 per unit for remote audit services.

. Residential Gas HVAC Program. It would apply to any residential customer or builder purchasing a new gas furnace or boiler. It would provide incentives for purchase of Energy Star rated equipment. The incentives would be $350 in the first year, gradually declining to $100-$150 after four years.

. Residential Low Income Program. It would be available to any household with income at or below 150% of the federal poverty guidelines and to seniors receiving Lifeline assistance. It would provide all cost-effective efficiency measures in each home with no cost cap. Program goals will be to generate 15% to 20% energy savings per participant for approximately 7,500 low income households per year.

. Residential New Construction Program. Any new home with gas heat, electric heat and/or central air conditioning would be eligible. The program would provide incentives of approximately 100% of the incremental cost of efficiency upgrades for homes with electric or gas heat, and 50% of the incremental cost for homes with central air conditioning and oil or propane heat. Program goals would be to achieve a 13% statewide market share for Energy Star homes in 2000, rising to a 34% market share in 2003. NRDC Initial Brief, Att.1.

NRDC proposes three commercial/industrial ("C&I") efficiency programs. For each program, all utilities would meet regularly to coordinate the development of a consistent program design and to ensure the program is implemented in a consistent fashion across the state. The proposed programs are:

. C&I Construction Program: It would apply to commercial, educational, governmental, institutional, industrial, and agricultural customers engaged in customer-initiated construction events. It would provide seven core programs and four specialized

markets/program paths. Program goals would be efficiency improvements in at least 5% of the new and renovated commercial floor space under construction in 2002.

. C&I Research and Development Program: It would initially consist of the following initiatives: motor services, new initiatives for unitary HVAC performance, and new technology assessment and program integration. The utilities would meet the following minimum program requirements: develop the administrative structure necessary for the technology assessment initiative within six months of BPU approval; develop and begin implementing a coordinated technology assessment initiative within nine months of BPU approval; begin the operation of the motor and HVAC installation of pilots by the end of 2000.

Operation & Maintenance ("O&M") and Recommissioning Program: It would target existing commercial and industrial buildings and facilities, including schools and institutions. It would begin a new building operator training and certification program, or enhance one or more existing programs. It would lay the groundwork for subsequent O&M initiatives and help building owners and managers to recognize the value of good building O&M practices.

RECO asserts that its proposed programs satisfy the requirements of the Act. RECO Initial Brief, at 40.

According to GPU, the DRA does not understand the load control program as shown by its recommendation that GPU reinstate the incentive payment. GPU Rebuttal Brief, at 28. GPU asserts that its program is successful as designed with the use of the radio controlled setback thermostat as the incentive. Id. GPU asserts that provision of an additional incentive would increase program costs probably above the benefits to the State. GPU Rebuttal Brief, at 29.

PSE&G asserts that its programs should be approved as filed, with a requirement that it submit a compliance filing (which will detail the budgets for each program) after the Board decides the spending level. PSE&G Initial Brief, at 12. PSE&G also recommends that the Board establish working groups, if further alignment of programs is necessary, among the utilities. Id.

PSE&G disagrees with NRDC's position that the Air Conditioning Cycling Program should not be funded through the SBC, asserting that it was approved by the Board in 1991 as a DSM Program. PSE&G Reply Brief, at 2. PSE&G further asserts that the Board's August 24, 1999 Order does not mention moving the program into base rates from the SBC and that the Board approved recovery for this program's costs through the SBC in its October 1, 1999 Order. Id. PSE&G argues that it would be unfair to take costs out of the SBC when the Company has no regulatory means to change base rates to accommodate its recovery. PSE&G Reply Brief, at 3.

PSE&G asserts that the ESCO Intervenors effort to continue the standard offer programs are based on regulations adopted in 1991 and further argues that their reliance on the Act's phrase about environmental benefits above and beyond standard offer demeans the Act's mandate that market transformation be considered in the Board's decision. PSE&G requests that the Board ignore the arguments in the ESCO Intervenors' Initial Brief. Id.

3. Additional program elements

The Independent Gas Utilities state that the record supports the Independent Gas Utilities' plan as meeting all of the requirements of the Act. IGU Initial Brief, at 2-3.

GPU asserts that no non-utility party submitted any detailed program designs although several proposed general concepts without sufficient detail to allow a response. GPU Rebuttal Brief, at 27.

GPU asserts that the Board cannot give any weight to the program designs submitted by NRDC as they were submitted after the close of hearings and therefore allowed no party the opportunity to submit discovery or cross-examine the preparer. Id. GPU Energy asserts that because these program designs are unsupported by the record, the Board must reject them. GPU Rebuttal Brief, at 28.

The ESCO Intervenors assert that NRDC's proposed performance goals and indicators must be rejected because they do not present any evidence during hearings and any such goals and indicators should be developed by a collaborative working group, not a single party. ESCO Reply Brief, at 14,15.

NRDC proposes Renewable Energy Programs – in which the SBC will support: 1) Small-scale technologies sited on the customer side of the meter side of the meter; 2) Projects for grid supply; and 3) Research, development and, commercialization projects and market development. NRDC Green Testimony, at 8.

a. Performance incentives and lost revenue recovery

PSE&G asserts that it should recover lost revenues and earn administrative performance incentives for both energy efficiency and renewable programs. PSE&G Initial Brief, at 11. PSE&G asserts that no matter who administers the programs, the rationale for lost revenue recovery, or the recovery of fixed costs lost due to saving a unit of energy that would have been recovered had the unit of energy been sold, continues. Id.

PSE&G has proposed performance incentives for most of its programs, which are to be paid to the administrator on the basis of implementation and results. Id.

DRA opposes any performance incentives for administration of energy efficiency programs. DRA Initial Brief, at 31, 33. If the Board were to allow incentives, DRA believes there should also be disincentives. DRA Initial Brief, at 34. DRA opposes recovery of lost revenues because utilities have opportunities in the competitive market to offset these losses. DRA Initial Brief, at 35. DRA recommends that the Board establish an advisory committee consisting of representatives of ratepayers, renewable energy industries, academic institutions, and government agencies to provide policy guidance to the Board and the ISA. DRA Initial Brief, at 25, 26. The Board should appoint the Office of Sustainable Business as interim ISA.

DRA argues that PSE&G's request for lost revenue recovery should be rejected because the foundation upon which it relies has been unraveled by the unbundling and restructuring of the electric industry. DRA Initial Brief, at 35. No utility has supplied any data to justify the inclusion of

performance incentives for itself in its program. DRA Initial Brief, at 31. Additionally, PSE&G has merely set easily reachable targets for itself. Id.

AWEA opposes use of the fund as a means of recovering revenues lost as a result of small-scale renewable energy facilities that reduce utility sales. AWEA Initial Brief, at 2.

NRDC opposes permitting the utilities to collect lost revenues associated with new program investments because the rationale for such recovery no longer exists. NRDC asserts that the rationale was to secure the utilities' indifference between demand-side and supply-side investments when determining how best to serve customers' needs in the context of integrated resource planning. According to NRDC, the electric industry no longer operates under the paradigm of integrated resource planning. Instead, NRDC asserts, the purpose of investing in energy efficiency and renewable energy programs is to maximize the public benefits they deliver. NRDC Initial Brief, at 9. NRDC argues that permitting utilities to recover lost revenues could allow the utilities to take in 24% or up to $30 million of the $128 million intended for actual program investments. NRDC Initial Brief, at 11.

GPU asserts that although the proposal to earn performance incentives has been opposed, certain parties support them as a way to assure performance. GPU Rebuttal Brief, at 17. According to GPU, several parties also opposed collection of lost transmission and distribution revenues, however it asserts that no one has provided a convincing argument as to why the utilities should not be made whole. GPU Rebuttal Brief, at 19. GPU asserts that the NRDC's and DRA's arguments on the subject make evident its lack of understanding of the purpose of lost revenue recovery. Id. GPU asserts that performance incentives for utility administrators will not make them whole for the revenues lost. Id. GPU further asserts that rates were merely unbundled during electric restructuring, which means the DSM related lost transmission and distribution ("T&D") revenues were not accounted for. GPU Rebuttal Brief, at 20. GPU asserts that disallowing recovery prospectively would equate to reducing the utilities' return on equity outside of a base rate case. Id. GPU therefore asserts that they should be allowed to collect lost T&D revenues associated with past and current programs until its next base rate case. Id.

PSE&G asserts that other states which have continued funding for energy efficiency and renewable energy have made their goal transition from resource acquisition to market transformation. PSE&G Rebuttal Brief, at 8. PSE&G asserts that measuring the performance of market transformation programs is basically a function of achieving certain implementation milestones and tracking changes compared to a market baseline. Id.

PSE&G disagrees with the DRA that its performance standards are too easily achievable and within PSE&G's direct control. PSE&G Rebuttal Brief, at 9. PSE&G asserts that the Board would have to approve the standards and that it is very unlikely the Board would approve standards which are not sufficiently stringent. Id. Further PSE&G argues that the standards must be agreed to upfront and must be approved by the Board. Id.

Regarding the DRA's argument that incentives must be accompanied by equivalent under-performance penalties, PSE&G asserts that the loss of performance incentives alone is sufficient penalty for under-performance and that the Board can always take further action against any administrator not performing adequately. Id.

PSE&G disagrees with the DRA's assertion that because the Act makes no reference to lost revenue recovery, PSE&G should not be allowed to recover lost revenues. PSE&G Rebuttal Brief, at 10. PSE&G asserts that the lack of reference in the Act actually supports the appropriateness of lost revenue collection. Id. PSE&G also disagrees with the DRA assertion that PSE&G amended its filing to seek lost revenue recovery for renewable energy programs. Id. PSE&G asserts that it was merely clarifying the record and that it was always its intention to seek recovery of lost revenues for renewable energy programs. PSE&G Rebuttal Brief, at 11. PSE&G asserts that the DRA's argument that DSM programs do not have to impact rates is flawed. Id. Without lost revenue recovery, PSE&G would require more frequent base rate cases to address the fixed cost revenue erosion resulting from the successful energy efficiency and renewable programs which reduce sales. Id.

Additionally, PSE&G asserts that the DRA's concern that PSE&G fails to consider the long-term benefit of reduced transmission and discharge is unfounded. Id. PSE&G asserts that it considered these benefits, but while there are long-term benefits, recovery of lost revenues addresses the short term fixed cost losses linked to existing plant. Id.

NJPII opposes recovery of lost revenues for renewable programs, pointing out that the legislation makes no provision for such recovery, and that the rationale of lost revenue recovery is no longer applicable in light of the new mandates for program funding. NJPII Initial Brief, at 38. NJPII emphasizes that energy supply requirements are no longer the sole responsibility of distribution utility companies and that utilities can no longer maintain an expectation of cost recovery for generation losses. Id.

b. Free ridership

Free ridership is a concept which asserts that certain customers would install the more efficient product even without a program or incentive. However, they take advantage of the program anyway. These customers are considered free riders.

The DRA asserts that if the Board adopts lost revenue recovery, a robust free rider discount should be applied. DRA Initial Brief, at 37.

GPU asserts that the DRA's supplemental testimony on free ridership was submitted in the middle of hearings so that no party had the ability to rebut the testimony. GPU Rebuttal Brief, at 20. GPU further asserts that because of this late submittal, the information in the record is inadequate for the Board to decide anything different than the currently approved 10% for rebate programs and zero for long-term ESCO contracts. GPU Rebuttal Brief, at 22.

According to PSE&G, the DRA claims that PSE&G has ignored the free rider effect on lost revenue calculation. PSE&G Rebuttal Brief, at 11. PSE&G asserts that free riders, if they exist for any program, need to be accounted for in the calculation of energy savings and that these adjusted savings should be used in all applications, not just lost revenues. Id.

c. Standard offer

GPU asserts that there is a mismatch between the Act and a standard offer or standard performance contracting program, and that the DRA recognized it in its brief. GPU Rebuttal Brief,

at 22. GPU asserts that the Board should not require any such new commitments similar to the "staggering long-term debt associated with standard offer programs." Id. Additionally, GPU claims that SESCO's and NAESCO's assertions that the utilities are unconcerned with the cost effectiveness of their programs are untrue. Id. GPU further asserts that the proposal made by SESCO for a standard offer type program would guarantee spending without ensuring it is linked to savings, and that such a program cannot be cost effective or transform markets. GPU Rebuttal Brief, at 23.

d. Market assessment

GPU opposes the SESCO and NAESCO argument that the utilities failed to abide by the CRA results in designing their programs. GPU Rebuttal Brief, at 24. GPU asserts that SESCO and NAESCO erroneously defined CRA as the Market Assessment, but that the CRA is the responsibility of the Board pursuant to the Act, while the Market Assessment was merely one element of the CRA. Id. GPU asserts that the Market Assessment evaluated the technological and market potential of particular technologies and program concepts. GPU Rebuttal Brief, at 25. GPU asserts that its Plan 2000 fulfills the Act's requirement to propose renewable and efficiency programs and that those programs addressed most measures in the Market Assessment to the extent that those measures were consistent with the Act. Id.

D. Other

1. Environmental benefits

GPU asserts that SESCO and NAESCO obfuscate the real issues with their claim that the utilities did not consider the requirement in the Act for programs to provide environmental benefits above and beyond existing standard offer or similar programs. GPU Rebuttal Brief, at 26. GPU asserts that this argument denies the reality that even if the utilities implemented the same programs, new environmental benefits would be realized, which the Act does not require be quantified or reach a particular level. Id. GPU asserts that the Board should nonetheless be concerned about the environmental benefits of the new efficiency and renewable programs and estimates its Plan 2000 will generate 38MW of load reduction over four years. GPU Rebuttal Brief, at 27.

The ESCO Intervenors assert that the utilities did not address the overall goal of the Act of providing environmental benefits above and beyond standard offers. The ESCO Intervenors assert that the utilities have not quantified the environmental benefits of current programs or of their proposed programs to demonstrate that they have met the Act's overall goal. The Board can only comply with the Act by rejecting the utilities' filings. ESCO Initial Brief, passim.

2. Miscellaneous

Based on the model of the renewable energy portfolio standard, DRA recommends that the Board adopt an energy efficiency portfolio standard in the second four-year period of CRA. Energy efficiency should be included in the Universal Service Fund. DRA Initial Brief, at 54.

The ESCO Intervenors assert that the utilities have failed to provide any essential information, therefore the Board should reject their proposals. The ESCO Intervenors assert that the utilities have not proved they will achieve market transformation, which is not a goal of the Act anyway, because there are criteria for market transformation. The utilities have not based their programs

on a Comprehensive Resource Analysis as required by the Act. In contrast to the utilities, the ESCO Intervenors state they have given the Board the guiding principals for the Board's decision. The Standard Offer program should be enhanced and improved, not discarded, or the Act's requirements will not be met. The ESCO Intervenors assert the Legislature wants measurable results, not process. The ESCO Intervenors state that market transformation and lost opportunities are captured by standard offer programs. The ESCO Intervenors recommend the Board issue a remedial order or require the parties to collaboratively develop the components of a remedial order, as follows: the Board should determine the appropriate funding for energy efficiency and renewable energy sources, then direct the parties to develop, in 45-60 days, the essential components for the remedial order. According to the ESCO Intervenors, the Act does not require that detailed program plans must be established and implemented by February 9, 2000. It only requires that funding be determined. Even though the Act states that the "...Board shall simultaneously determine ... the programs to be funded..." the ESCO Intervenors assert that the Board should not interpret that to mean that detailed program plans must be established or that programs begin by any specific date. The ESCO Intervenors believe the Legislature intended the Board to engage in a multi-step process. The Board must first determine the environmental benefits of the Standard Offer and similar programs. This should then be the baseline used to evaluate programs and the appropriate funding. The Board should then determine which programs, efficiency and renewable, will result in "measurable" environmental benefits above the baseline. ESCO Intervenors state that the utilities falsely claim market transformation is the principal legislative goal. ESCO Initial Brief, passim.

Eastern Heating and Cooling Council (EHCC), which did not submit either an initial brief or a reply brief, is a non-profit educational organization that has been providing training to HVAC contractors in New Jersey since 1990. They also provide information to consumers and businesses about energy efficient equipment and available incentive programs. EHCC has been working, as part of the New Jersey Residential HVAC Working Group, to develop a common platform for residential high efficiency HVAC programs implemented by the utilities. This platform includes more stringent installation requirements for rebate qualification for heat pumps and air conditioning systems and use of sizing calculations.

Currently, only GPU and PSE&G require all of these to qualify for a high efficiency HVAC rebate. Conectiv requires sizing but not airflow and system charging documentation. EHCC recommends that Conectiv adopt these requirements in order to provide the entire state with a uniform program platform.

IV. SETTLEMENT PROPOSALS

As noted above, in its orders establishing the procedures for this matter, the Board encouraged the parties to attempt to negotiate a settlement of the issues. The Board established deadlines for the submission of any negotiated settlement and the opportunity for the parties to comment thereon. While, unfortunately, the parties were unable to agree to a single stipulation, two groups did reach a general consensus. One stipulation (Utilities/NDRC Stipulation) was signed by the NRDC, EDF, EHCC, AWEA, BP Solarex, RV and six of the seven New Jersey electric and gas utilities, RECO being the lone exception. The second stipulation (DRA Stipulation), was joined by DRA, NJPII, NAESCO, ONSITE SYCOM, Astropower, Inc., EPV, GeoSolar, Inc., Green Mountain.com, H Power Corporation, Mid-Atlantic Solar Energy Industries Association, Siemens Solar Industries and BP Solarex. The key substantive elements of each stipulation are summarized herein below.

A. Utilities/NRDC Stipulation

The statewide level for energy efficiency and class I renewable energy from 2000 - 2003 is $423 million. Funding over the four years would be as follows: for 2000, the funding is $70 million; for 2001 it is $108 million; for 2002, it is $120 million; and in 2003 it is $125 million. The proposed allocation between energy efficiency (EE) and renewable energy (RE) respectively for each of the four years is as follows:

	2000	2001	2002	2003
EE	64.05	91.8	97.8	97.5
RE	5.95	16.2	22.2	27.5

The average is $105.75 million per year. The statutory eight-year funding period would begin in 2001, while the year 2000 would be a transition year.

For years 2000-2003, the funding allocation among the utilities is as follows:

	2000	2001	2002	2003
PSE&G electric	$26.9	$40.2	$43.1	$43.2
PSE&G gas	$12.4	$19.4	$21.9	$21.8
GPU	$20.2	$30.2	$32.7	$34.8
E'TOWN	$ 1.9	$ 3.7	$ 4.0	$ 4.2
CONECTIV	$ 4.7	$ 7.6	$ 9.8	$11.4
SJG	$ 1.2	$ 2.1	$ 2.8	$ 3.5
RECO	$ 0.4	$ 1.1	$ 1.7	$ 1.9
NJN	$ 2.3	$ 3.7	$ 4.0	$ 4.2

RECO is not a party to this stipulation and did not agree to these numbers.

New programs would include direct load control programs for 2000-2003 only, but are not subject to new incentives, and they would be capped at $3.90 million for PSE&G, $1.8 million, for GPU, and $4.2 million for Conectiv. Performance incentives are included on energy efficiency and customer sited clean energy generation programs. Legacy program costs are not included. GPU will discontinue measurement and verification on legacy programs, and use that money for new programs. Also, new program lost revenues is not treated as a new program cost. No earnings test as set forth in the DSM regulations would be used for lost revenue recovery.

No trust fund is proposed. An ISA would be established for supply side renewable energy programs, which would bill the utilities periodically for funding, but the utilities would administer the energy efficiency and customer sited renewable energy programs. Funds for new programs that are not spent can be carried forward into the next year or spread over future years. If overspending occurs, that amount can be deducted from a subsequent year's budget. However, utilities would strive to meet program goals.

Performance incentives for meeting certain goals are proposed in combination with a provision that poor performance could potentially result in the withdrawal of program administration responsibility.

Administrative Costs (as percent of budget)

	2000	2001	2002	2003
Customer sited	21%	9.4%	4.3%	3.6%
Grid-Supply	20%	8.5%	4.0%	2.8%
Market Dev.	9.2%	2.3%	1.6%	1.4%

A Renewable Advisory Panel would appraise the development of renewable energy in New Jersey and make recommendations on how to allocate funding effectively.

Three statewide renewable energy programs are proposed and would be consistent statewide. The first program would provide direct buydown incentives for customer sited small wind, sustainable biomass, photovoltaics, and fuel cells. The program is intended to develop market demand for these technologies and to develop an infrastructure to support installation and maintenance of these systems. The grid-supply program would provide financial incentives to encourage renewable grid connected electricity generation, which so far has not been successful in New Jersey. The third program would have the ISA fund research and demonstration projects in order to enhance the first two programs.

Gas utilities will allocate 100% of their renewable funds to the customer-sited program and with that would fund only gas-fired fuel cells. Electric utilities would fund the other renewable technologies such as photovoltaics and small wind technologies. The budget, on average, for renewables for four years is 17% of the total budget, but asserted to be 25% over nine years. No more than 60% of the funding over 2000-2003 can go to any one of three renewable programs. There is a four-year ramp-up of funding: $6 million, $16 million, $22 million and $27 million for a total of $72 million.

The renewable funding can go to 25% during the first four years if there is a demand for additional funding. Recovery will be allowed for budget amounts exceeded for customer-sited program expenses. Additional funds may come from future budgets and unused energy efficiency budgeted funds.

For customer-sited programs to address concerns that a consistent program be available in all service territories, if funds are exhausted, funding would first come from future renewable budgets, through 2003. If those funds are exhausted, funding would come from its energy efficiency budgets not already committed. If additional funds are still needed, a utility can ask the Board to order the ISA to provide additional funding from surplus funds. If the funding is still inadequate, the utility may petition the Board for funds from other utilities available customer-sited funds. Any utility can agree to shift customer-sited funds or use more than its share and request recovery from the Board.

The Utilities/NRDC Stipulation proposes the Grid-Supply Clean Energy Generation program, which will complement the Renewable Portfolio Standards to address market barriers. Specific strategies will support particular needs of each technology, production incentives (e.g., auction for $/kWh

incentives), risk mitigation (e.g. insurance, loan guarantees), and below market financing. The RPS establishes demand and the Grid-Supply Program will focus on supply-side equipment, suppliers, project developers, market support for green consumers, project financing, siting and regulatory approval.

For the year 2000, the utilities allocated 75% of their energy efficiency funding for the residential sector and 25% of their funding for the commercial and industrial sectors with the following programs. The Residential Electric Heating, Ventilation, and Air Conditioning (HVAC) program promotes improved efficiency, proper sizing and installation as well as Energy Star programmable thermostats. The Residential Gas HVAC program promotes Energy Star furnaces, boilers, high efficiency gas water heaters and Energy Star programmable thermostats. In 2000, incentives was to vary by utility; in 2001, all gas utilities will offer the same program. The Residential Windows Program promotes Energy Star windows. No incentives are proposed. The Residential Low Income Program provides direct installation of efficiency measures, energy education and arrearage forgiveness for those with income at or below 150% of the federal poverty guidelines. The Residential New Construction Program provides improved efficiency of gas heat, electric heat and/or central air-conditioned residential buildings using incentives and other mechanisms. The Residential Retrofit Program provides information about energy use and efficiency through the Internet and by mail, free of charge.

The Residential Lighting Program is designed to transform specific components of the residential lighting market, particularly fixtures. The Residential Appliance Program will promote Energy Star appliances with an initial focus on refrigerators, clothes washers, dishwashers and room air conditioners. No consumer incentives are proposed.

The Commercial & Industrial Energy Efficient Construction Program consists of seven core programs and six specialized markets/program paths. The core programs include: 1) prescriptive efficiency measure rebates; 2) custom incentives for more complex measures; 3) comprehensive incentives for more comprehensive measures; (4) design incentives and support, to architects and engineers; 5) technical assistance to help customers evaluate energy efficiency options; 6) incentives for technical support for commission services; and 7) coordinated marketing strategy. The specialized markets/program paths include: 1) chiller replacement; 2) school and state/municipal government facilities; and 3) lighting remodeling. The Program will also provide contractors with specialized marketing and training, technical support for state's commercial building code, an initiative to enhance efficiency of customer motor management practices, and an initiative to encourage efficient installation of unitary HVAC equipment. The Commercial & Industrial Building Operation & Maintenance Program is designed to provide improved building operation and maintenance practices. The Compressed Air System Optimization Program is designed to capture significant energy savings from these industrial systems, but applies only to GPU and PSE&G.

Under the Residential Air Conditioning Cycling Load Control Program, certain utilities will continue to use air conditioning cycling strategies to lower peak demand on days of system peak. Incentives vary by utility. Through the School Energy Efficiency and Renewable Program, GPU and PSE&G will make available grants, materials, etc. to learning institutions.

The transmission and distribution lost revenue associated with energy efficiency programs may be collected from 2000-2003 through the SBC, but there will be no lost revenue recovery for

renewable energy programs. Lost revenues may not be included as part of new funding. Lost revenue will be calculated using the to-be-approved evaluation plan. The fixed margin applied to the lost KWh, Kw and therm will be calculated each month by rate schedule. GPU will collect a transition payment equal to 90% of lost revenues and incentives in lieu of said recovery for legacy programs.

Performance incentives are proposed as up to 8% of the program costs budgeted and are included in new program costs. Incentives can be earned by the utility administrator for implementing energy efficiency and customer-sited renewable energy programs. Uncollected incentives can be carried to the next year for program expenditures.

B. DRA Stipulation

The funding level for the first four years is $128 million per year based on fifty percent of the $256 million being collected, for a total of $512 million. Funding is proposed as a uniform spending rate for electric ($/kWh) and for gas ($/therm), although it is acknowledged that there may have to be a phase-in for some utilities over the first four years. The spending rate should apply to both energy efficiency and renewable energy, and should not include past DSM commitments. For the electric utilities, the rate should be $.00159/kWh. For gas utilities, the rate should be $.00063/therm. Renewable energy funds should only be collected from electric ratepayers. The allocation for funding for energy efficiency programs would be $22 million from gas rates and from electric rates $74 million plus $32 million for renewable energy programs from electric rates.

This stipulation includes no load control programs as part of the new programs because it is considered more appropriate that they be on the unregulated side after the first year. Monies collected for renewable energy programs would be put in a trust fund, and a separate trust fund would be set up for energy efficiency monies collected. There would be an ISA for both energy efficiency and renewable energy programs with regulatory oversight, which would prevent business conflicts of interest. Additionally, an ISA is less costly and maximizes marketing funds. The administration of energy efficiency would be transitioned to an ISA and if the Board selects a non-government ISA, performance incentives would be acceptable.

A uniform set of programs would be available to all without regard to utility franchise territory. For large scale, grid supply projects there would be a Competitive Solicitation Program and a Customer Credit Program, which is a credit on customer bills for the extra cost of renewably produced kwh. For small scale, distributed generation, there would be direct incentives or “buy down” based on the system rated capacity, which would decline with increasing size and over time.

The allocation of the funding for renewable energy programs proposed is 40% for large scale, grid-supply technologies and the Customer Credit Program, 40% for the “buydown” for small scale (<100 kW) or distributed generation with a 60% project cost cap, and 20% for infrastructure programs, which are economic development, research development and demonstration, training, certification, and education.

The SBC funds should provide incentives for emerging technologies, no near-market technologies that would be supported by the RPS should be funded by the SBC. The stipulation proposes an Advisory Committee to monitor technology development to determine which types are “near-market”. Methane from landfills is considered “near-market” and should therefore not be supported

by these funds.

Renewably fueled fuel cells should receive incentives, whereas fossil fueled fuel cells should not receive incentives. However, if such facilities are funded, they should receive significantly lower incentives.

The funding allocation is divided among three energy efficiency program categories as follows: 47% to pay for savings (P/S), 45% to pay for technology (P/T) and 7% to pay for infrastructure (P/I). The allocation of funding by sector is 45% residential, 50% commercial and industrial and 5% research and development.

The Advisory Committee proposed to assist the Board and ISA in program design will design specific program measurement protocols. For pay-for-savings programs measurement will be based on USDOE standards. Measurement and payments are limited to three years regardless of measure life. Contractor payment flexibility and deemed savings will be allowed for some equipment.

The DRA recommends that up to ten energy efficiency programs be available statewide. Five programs are proposed for residential customers with details to be determined by the Advisory Committee: audit based retrofit (P/S), which provides comprehensive audits; direct-install measures; the sale to non-low-income households at market rates of comprehensive measures, HVAC (P/T; P/I), which provides incentives for the sale and installation; appliances (P/T P/I), which also provides incentives for the sale and installation; and new construction incentives (P/T). Four C&I programs are proposed and one for research and development. No lost revenue recovery for new energy efficiency and renewable energy programs are permitted under any circumstances.

V. COMMENTS ON THE SETTLEMENT PROPOSALS

With receipt of the Utilities/NRDC Stipulation and the DRA Stipulation, the Board's schedule for comments was met. Filed comments were received from the following: RECO, EDF, NJPII, AWEA, DRA, DMC, SESCO, jointly from the six signatory gas and electric utilities and NRDC. NAESCO, ONSITE SYCOM, and NJESCO submitted a joint comment. NRDC supported its own stipulation. In addition, the Board also received a letter generally supporting the Utilities/NRDC Stipulation. Key elements of the comments provided by each entity are summarized herein below.

A. Comments on the Utilities/NRDC Stipulation

1. EDF

EDF asserts that the Utilities/NRDC Stipulation under-funds energy efficiency and renewable energy in the first four years by $89 million based on $128 million per year. Renewable energy should get $32 million per year for the first four years. However, the stipulation does not even allocate 25%. EDF believes that the Act requires 25% per year not an average of 25% over eight years. There is no assurance included for 25% in eight years.

The Utilities/NRDC Stipulation allots too much funding for small-scale renewable energy projects and not enough for grid supply projects. As the California experience shows, small scale distributed generation may not use all of the subsidies. However, grid-scale programs are taking full advantage. The auction is fully subscribed. Therefore, a larger portion should go towards grid-

scale projects. EDF approves of the auction mechanism proposed in the stipulation for grid supply. However, its funding is too modest.

EDF supports an ISA for program administration and believes that the stipulation should be further expanded to provide an ISA for small-scale renewable energy programs, at least to ensure that funds foster competition and deregulation. It is unclear from the stipulation whether the ISA holds the funds, in what type of account, and if interest stays with the ISA. It should be in a secure, interest bearing account. Energy efficiency can obtain funds from any ISA surplus, but not the reverse. EDF asserts that it should be reciprocal.

EDF's signing of the agreement is done with the understanding that these issues will be addressed and resolved.

2. NJPII

The Utilities/NRDC Stipulation does not adequately foster competition, and although it attempts to do this for renewables, it is not enough, particularly with regard to utility control over small technologies. The administrative structure proposed is overly complex to maintain control over the renewable energy program and the flow of dollars. New programs should be funded at the legislated levels, money should be maintained in trust funds, an ISA should be appointed for all renewable programs, and at least 90% of program dollars should be budgeted for technologies.

The Utilities/NRDC Stipulation is very detailed for three renewable programs, but they are not in the record, and the budgets proposed are not supported by evidence. The budgets list numerous activities without providing information on why activities are appropriate. The Utilities/NRDC Stipulation budgets for target marketing and market facilitation, which should be done by the providers of renewable products at their own expense. Bolstering utility name identity should not be a goal of Board decisions on administration or budget issues in these proceedings. Administrative costs are too high. Without the opportunity for debate on stipulation proposed activities and budgets, the Board has no record to base acceptance of these renewable programs. The funding does not meet either the 50% or the 25% level in the Act until the utility stipulation promises to make up the shortfall in the out years. Energy efficiency and renewable energy will compete for funds at a time when both will need to increase funding. Trust funds are needed to protect the public.

The DRA Stipulation recommends a 5% administration cap on all functions that the Utilities/NRDC Stipulation identifies as administration, market analysis, program development and planning, monitoring and evaluation. The Utilities/NRDC Stipulation's buy down program alone has 42% of the total budget in 2000 to these administrative functions, reducing to 9% in 2003, and 17% in 2003. The Utilities/NRDC Stipulation's buy down program must be modified to allow competitive markets to result.

Allowing natural gas fuel cells to participate, and then separating them from competition with other renewables creates a guaranteed market for natural gas fuel cells. The Utilities/NRDC Stipulation states natural gas fuel cells are Class I technology. The Act is silent on this except in general on fuel cells. Over 25% of renewable funds are set aside for natural gas fuel cells. Fuel cells should have to compete with other technologies.

Renewable programs should not be designed to create additional market opportunities for transmission and distribution utilities. Technologies should not be limited by service territories because some customers will have more access to renewable technologies than others, which may distort the renewable energy market. Competitive disadvantages will result if the utilities can market renewable supply options in their service territories, simultaneously offering energy products through affiliates.

Preferred administration is a neutral ISA to implement all the renewable energy programs at reasonable capped administration cost.

An all-source auction for large technologies is premature. If it is purely price based, technologies with lower costs have access to more of the funds, which may result in a limited number of technologies. An auction should consider other factors to help ensure diversity. The DRA Stipulation has an initial competitive solicitation program to construct initial projects in New Jersey. After successful implementation and market conditioning, a competitive auction would take place, creating a foothold for a variety of large-scaled technologies.

Collaborative processes for drafting regulations and program design, exclusive of public input, are unlawful.

NJPII recommends the Board adopt the DRA Stipulation recommendations for funding level, administration and program design for energy efficiency and renewable energy.

3. AWEA

Its support of the NRDC proposal does not mean AWEA is opposed to independent administration of clean energy funds. AWEA supports independent administration.

4. NAESCO, ONSITE SYCOM, NJESCO

The Utilities/NRDC Stipulation fails to meet the Act's requirements. The primary difference between the Utilities/NRDC Stipulation and the DRA Stipulation is that the utilities attempt to shield themselves from risk and the full effects of competition. The risk belongs with the program administrators and vendors.

NAESCO, ONSITE SYCOM and NJESCO entirely support the comments of the DRA. These comments are supplementary in order to assert that the Legislature mandated $128 million for new programs and the production of more environmental benefits than the old standard offer programs.

There is no justification in either the Act or the record for lost revenue recovery. The utilities receive tangible and intangible benefits from participating as a competitive provider of products and services.

An ISA offers clear benefits over utility administration, such as delivery of uniform statewide programs, more effective use of marketing dollars in unified marketing and is more efficient and economical. The Utilities/NRDC Stipulation conceded that uniform statewide programs are more efficient, but haven't addressed unified marketing campaigns. Every major advertiser in New Jersey uses unified marketing campaigns yet the utilities have seven approaches. NAESCO,

ONSITE SYCOM and NJESCO do not object to the utility administration of the energy efficiency programs, but object to the implementation scheme proposed in the utility stipulation. They suggest a joint venture model like Mass-Save and RISE.

The Utilities/NRDC Stipulation is designed to maximize money flowing to the utilities through uncapped administration costs, incentives, lost revenues, uncoordinated marketing to promote individual utility brand names, and use of program funds to establish their energy services affiliates that threaten legitimate competition in some markets.

The Advisory Committee should represent the full spectrum of participants. Program design should be decided by the Advisory Committee. Each stipulation proposed a process that will take the balance of the year to complete, the difference between the two stipulations is that the Utilities/NRDC Stipulation addresses specific technology niches, but offers no demonstration that better satisfies the legislative mandate. The Xenergy study said it is more cost effective, but they are designed and operated by National Energy Efficiency Project (NEEP). According to testimony of utility witnesses in this case, these programs were assigned to NEEP on a non-competitive basis. The two sets of programs proposed differ by incentive structure, assignment, and allocation of performance risk. The DRA Stipulation allows vendors to be paid only for delivered results extended to a whole set of programs and promotes competition in every program. The Legislature mandated that any new programs demonstrate a lower cost/kWh than standard offer. The utilities disagree because this results in a clear performance standard and therefore performance risk. The Board should limit its approval to programs where clear metrics exist and move gradually on other programs.

Under the Utilities/NRDC Stipulation, the utilities would obtain full compensation of costs and incentives without linkage to energy savings because market transformation takes 2-3 years to deliver results. Therefore, there is no immediate proof of savings. Utilities and non-profits should step aside and let companies that will take performance risk deliver the programs.

The DRA Intervenors introduced ample evidence of studies commissioned by the utilities that document the benchmark environmental benefits of standard offer programs, which the utilities tried to have excluded as irrelevant. The DRA Stipulation outlines procedures for measuring environmental benefits.

The DRA Stipulation encourages competitiveness and multiple-vendor awards for low income programs. Lost opportunities are addressed by both Stipulations indirectly, however, the DRA stipulation attempts to Stimulate the marketplace to propose new approaches. Market barriers are also addressed by both stipulations indirectly, but the DRA Stipulation emphasizes competitive market mechanisms. They urge the Board to approve the DRA Stipulation.

5. RECO

The Utilities/NRDC Stipulation resolves the four-year funding level, program administration and determines the programs for all the utilities. However, RECO is not a party to and did not sign the stipulation. It is not a settlement and cannot, therefore, bind RECO. RECO does not object to a collaborative process to develop similar program categories nor to administration, but only to the funding provisions for RECO. With respect to RECO's energy efficiency and renewable energy ("EE&R") funding obligations, it is not a settlement among adverse parties and cannot be used in

any way for Board decision-making regarding RECO. The increase for RECO is disproportionately larger than for the signatories' increases as compared to 1998 collections. In the absence of a voluntary proposal, the Board must adopt RECO's filed budget of $260,200 for EE&R supported in the record or RECO's voluntary proposal of $534,000, set forth in its comments. The current regulatory scheme did not anticipate an SBC increase during the transition period and any increase to RECO's EE&R funding would be uncollectable and result in future rate increases. The utility stipulation would cause an additional $4.059 million deferral over the 4-year transition and an additional rate impact of 3% in 2004. RECO is willing to incur the same increase as other utilities, which would result in total statewide funding of $420 million in four years not $423 million. If the Board still wants $423 million, it should reapportion the difference to the other six utilities that agreed to that number. The stipulation would require RECO to spend $1.9 million in 2003, which is seven times more than its projected average annual collections. RECO asserts that the other electric utilities increases are only 1.5 times compared to 3.6 times for RECO.

The Board has other policies from the Act that it must balance with the CRA proceeding such as maintaining sustained lower electric rates, continuing recovery of DSM costs, and maintaining electric utilities financial integrity. Any Board decision has to be based on substantial, competent, credible record evidence and be consistent with the Act and relevant Board Orders. The Board must consider RECO's circumstances in determining the energy efficiency and renewable funding requirements for the next four years.

Although courts have found that a non-unanimous stipulation can serve as a fact-finding tool and be approved, there are constraints. The constraints are that there be interest adversity among the parties, the active parties should participate in negotiating, and the non-unanimous parties afforded an opportunity to argue against it. They must have an evidentiary record, and the Board must examine the record and find the stipulation meets the statutory requirements. This stipulation does not meet the adversity criteria for the funding proposed for RECO because RECO was not a party nor does it meet the statutory requirements, because the funding amount is arbitrary and contrary to record evidence.

Mr. Greene of NRDC illustrated how additional program funding could be obtained without increasing the SBC for other electric utilities. However, for RECO, Mr. Greene only found $180,000 per year of available funding from generation related lost revenues. RECO asserts that number is $116,000.

6. DRA

The DRA describes the Utilities/NRDC Stipulation as primarily a continuation of 'business as usual'. The DRA asserts that the funding is insufficient to meet legislated requirements and that it underfunds new energy efficiency and renewable energy programs by $89 million during the first four years. The stipulation provides no legal foundation the funding proposal. Any unspent funds in a given year can only be carried forward once, and is unclear what happens to the funds if they continue to be unspent. The DRA asserts the plan is to use it to offset legacy program costs and that this provides motivation for the utilities to underspend.

The DRA disagrees with the proposal to use any revenues from the potential sale of direct load control programs to third parties to offset program costs. The performance incentive proposal is overly generous and fundamentally flawed because the goals are too low, the incentives are too

high, it lacks the necessary dead zone, where no incentives or penalties accrue, and it lacks penalties. Additionally, DRA asserts this proposal provides incentives for implementing and finalizing CRA programs, which is a requirement under the Act.

The DRA argues that the proposed discontinuation of measurement and verification for GPU legacy programs, but receiving transition payments is outside the record. Nothing in the Act or existing DSM regulations permits such recovery based on estimated lost revenues and it is directly at odds with past Board policy. Additionally, DRA asserts that the Act states that existing DSM commitments cannot be considered a "new" program cost and the stipulation proposes the savings from this discontinuation of measurement and verification would be used for new programs.

The request for lost revenue recovery should be rejected because the Act does not allow it. The requirement in the Act to transition programs to the competitive market is contrary to and unnecessary because the Act mandates new energy efficiency programs. The DRA further argues that the rationale which may have existed, has been destroyed by the new framework of a SBC created by the Act, which is like a tax. Therefore, the State need not buy utility cooperation because they have competitive opportunities now. The DRA notes that previously the NRDC did not support lost revenue recovery.

The existing DSM rules allow lost revenues only for performance programs that were measured and verified with a free rider offset and subject to an earnings test. Now all seven utilities' energy efficiency programs are eligible without the stringent requirements. There are many benefits from energy efficiency programs for a distribution utility so that sales growth will likely continue, resulting in no real lost revenues.

The DRA disputes the argument that natural gas fuel cells are a Class I renewable energy technology under the Act, asserting the Act merely talks about fuel cells with no mention of fuel type. No one technology should receive such an overwhelming proportion of the funding. DRA argues that gas utilities should not fund renewable energy projects at all because the goal is reduction in electricity generated by non-renewable fuels.

The DRA further states that the Act requires 25% of the new program funding be for renewable energy, but the Utilities/NRDC Stipulation only averages 17% per year. The independent statewide administrator that is proposed depends on funding from the utilities and is therefore not independent. Despite the utilities' assertions about program uniformity, there is no real uniformity and too much control is left with the utilities. The Utilities/NRDC Stipulation includes no statewide marketing, which provides an opportunity for the utility to develop brand identification at the ratepayers expense. Based on common sense it is obvious that a single, independent statewide administrator would be less expensive and more efficient.

The DRA asserts that the proposed programs are replete with costly, unnecessary studies. Only two of those proposed are needed, the baseline study and the one to determine a methodology to measure environmental savings. The customer-sited renewable energy program has no specific plan or standards. Additionally, DRA asserts that approximately 20% of the Customer-Sited Clean Energy Generation Program funds are for administration and marketing. The grid supply program should be scrutinized to ensure it supports only renewable technologies as opposed to "clean" technologies, and only those technologies that are not market ready. The third renewable program should just be a part of the other programs as it is merely research, development and training.

Devoting 25% of the renewable energy funds to research & development is excessive and should be capped at 10%.

The proposed ongoing collaborative process is not a statewide group, but an exclusive group of utilities and the NRDC, which has significant power and would use new program funds to pay collaborative consultants. The DRA further asserts that this collaborative group will evaluate performance targets and make recommendations to the Board as to the level of performance incentives. This is self-serving and a clear conflict. The Board should reject the entire collaborative process proposed in the Utilities/NRDC Stipulation.

The minimum requirements for an administrator are better performed by an ISA and would eliminate the need for the Board to police the huge potential conflict, particularly adherance to affiliate relations standards. The Board should reject utility program administration.

The proposal to commence a process to target clean distribution resources to lower transmission and distribution costs and an alternative form of regulation to remove any disincentives to reduce throughput, does not belong in this proceeding, but does accentuate the inherent conflict in utility administration of these programs.

7. Utilities/NRDC

The Utilities and NRDC submitted comments in favor of their CRA Stipulation (Utilities/NRDC Stipulation) on February 24, 2000. They point out that beside themselves, other interested parties signed on to the Stipulation, such as, EDF, BP Solarex, AWEA, Plug Power, GE Microgen, ONSI, Renewable Ventures and EHCC (together Signatories). Each signatory reserves the right to withdraw if the Board does not approve the Stipulation as written.

The Utilities/NRDC Stipulation proposes spending $423 million from 2000 to 2003 by the utilities, and a commitment to fund energy efficiency for nine years. The Stipulation also includes flexible spending, depending on market conditions, with 25% for renewable energy programs, and a 50/50 split between customer-sited and grid supply programs.

The energy efficiency programs phase out pay-for-savings and move towards market transformation programs, which the Utilities and NRDC maintain is in the Act. Further, the Utilities and NRDC will work through a collaborative process and the Renewable Working Group to modify existing programs or develop new ones. Funds unspent in one year will be carried over to the next. The Utilities will administer the energy efficiency and customer-sited renewable energy programs, while there will be an Independent Statewide Administrator for the grid supply renewable and infrastructure development programs.

The legal standard advanced by the Utilities and NRDC on behalf of the Signatories, is that the stipulation does not need to be unanimous for the Board to approve it under Public Service, 304 N.J. Super. at 268-269 (citing Mobil Oil Corp. v. Federal Power Comm'n, 417 U.S. 283, 314 (1974). In Public Service, the Appellate Division found, "(t)he majority of courts from other jurisdictions have held that a utility agency may adopt stipulations as fact-finding tools, as long as it evaluates the stipulations and expressly finds that the stipulations satisfy the statutory elements of proof". Therefore, the fact that not every party signed the Stipulation should not prevent the Board from adopting it.

The Utilities/NRDC Stipulation proposes appropriate funding levels as well as allocations among the utilities, is cognizant of the rate impacts and provides for increasing the funding in the future. Also addressed in the Stipulation are the treatment of past funding commitments and undercollections from prior years in light of the four-year rate cap transition period.

The question of "new program costs" was resolved in order to assure that the Utilities were meeting their spending obligations. Essentially, the new programs start when the current DSM programs end and include any indirect costs. However, direct load control programs will be funded under the SBC through 2003, but not expanded. Further GPU's measurement and verification funding for legacy programs should be discontinued.

Although the Act is silent on lost revenues the Utilities/NRDC Stipulation provides that to the extent the utilities lose transmission and distribution revenues due to the implementation of energy efficiency programs, the Utilities may recover costs through their SBC through 2003. The utilities will forego lost revenues from renewable programs.

With respect to funding, the Utilities/NRDC Stipulation provides for the utilities to continue: (1) administering energy efficiency programs as well as; (2) customer-sited renewable programs, while; (3) an ISA administers grid-supply and market development renewable energy programs. No statewide trust fund is included in (1) and (2) so that the SBC funds are spent within each utility's service territory, but for (3) a trust fund will be utilized.

The electric utilities will fund Grid-Supply and Market Development Programs, which they can use to satisfy their renewable portfolio obligations. Conversely, the gas utilities have no such obligation and thereby no funding responsibility.

The Customer-Sited Program provides for uniform funding statewide and all Class I renewables are eligible for incentives including natural gas fuel cells. Since the Act includes and the market conditions require incentives for natural gas fuel cells they will receive the same level of funding as other Class I renewables.

The Utilities and NRDC point out that the Act requires the Board to both determine the funding level and the programs simultaneously. The Signatories have agreed to a "single set of statewide program plans for energy efficiency (including low income programs) and renewable energy programs for all utilities." The detailed descriptions of the programs are in the Stipulation and include specific strategies to overcome market barriers.

The Signatories will look to phase out load control programs and energy efficiency programs that the market can support on its own. There will also be a residential retrofit program without ratepayer funding. The Utilities/NRDC Stipulation has an evolutionary approach to program design so that lost opportunities can be captured and low income customers can be better served. Thus, the objectives of the Act are best met by the Utilities/NRDC Stipulation.

8. Honeywell DMC

By letters dated February 16 and 24, 2000, Honeywell DMC basically supports the Utilities/NRDC Stipulation, since it provides appropriate funding and allows the Utilities to transition out of the

existing load control programs. However, Honeywell DMC has some suggestions to improve the document. In particular, the low income customers require more attention and funding. Direct services should be provided to residential low income customers to comprehensively identify and implement efficiencies in existing homes.

Another concern of Honeywell DMC is the small to medium-sized businesses in economically distressed areas. They should receive one-on-one treatment similar to the low income residential customers

9. SESCO

By letter dated February 24, 2000, SESCO sent in comments in opposition to the Utilities/NRDC Stipulation and in favor of the DRA Stipulation. SESCO can show that the Utilities/NRDC Stipulation does not comply with the Act, because it results in an inadequate funding level and delivers no measurable savings. Further, it is not supported by the evidence and does not produce environmental benefits. Most importantly, the DRA Stipulation does comply with the law.

SESCO and other ESCOs have submitted the WECC Report which they purport demonstrates the efficacy of their position. The WECC Report analyzed standard offer programs and advances the theory that they provide valuable benefits to ratepayers.

SESCO, therefore, wants the Board to reject the Utilities/NRDC Stipulation and adopt the DRA Stipulation. The DRA Stipulation complies with the Act, is supported by the evidence and will produce energy savings, bill reductions, cleaner air, more jobs and improved cities and economy.

B. Comments on the DRA Stipulation

Comments on this stipulation were submitted by the following parties and are summarized below:

1. NRDC

NRDC compared this stipulation to its own and concluded that the Utilities/NRDC Stipulation would be better for the environment and New Jersey's electric and gas customers.

2. RECO

RECO opposes the DRA Stipulation – as it is not a "settlement" with compromises by adverse parties, but rather a position paper restating litigated positions of signatories. Therefore, RECO incorporates its brief and reply brief and its comments on the Utilities/NRDC Stipulation about standard of review, record based funding and voluntary funding. The Board should reject the DRA Stipulation entirely. It attempts to impose a minimum $8 million deferral and rate impact, unsupported administrative, and program design provisions. It lacks any utility signatures, although a utility is a necessary party to any settlement financially impacting the utility. It cannot even serve as a fact-finding tool for the Board. Consistent statewide funding for EE&R and a uniform SBC would not be logical or appropriate until constraints are removed. Utilities today have a wide array of per kWh levels with a current fixed rate. Thus, it is not the time to consider a uniform approach. The Act makes no mention of uniformity. The uniform rate proposed is arbitrary and not based on any record evidence. The DRA Stipulation's phase in for some utilities over four

years is even harsher than RPA's litigated position that these should be phased in. Either results in a multi-million dollar deferral even before any deferrals from the Board's Summary Order in Docket Nos. EO97070464, EO97070465, and EO97070466 dated July 28, 1999.

The administration and program design are unreasonable and contrary to credible evidence. Regarding administration, the Board should reject attempts to introduce new information after the close of hearings, such as detailed assertions about Vermont's administration efforts and a proposal that they be introduced here; an affidavit from New Jersey Commerce and Economic Growth Commission; the administrative overhead track record of the Office of Sustainable Business. "The Board should deal harshly with such blatant and unrepentant disregard of the rules of administrative practice and principles of fair play."

Regarding programs, the DRA Stipulation ignores the Act's market transformation goal by allocating almost half the energy efficiency funding proposed in this stipulation to standard performance contracts. As RECO stated in its comments on the Utilities/NRDC Stipulation, it does not oppose a collaborative process to develop programs similar to the categories set forth therein, however program design flexibility is necessary.

3. Utilities/NRDC

The Utilities and NRDC submitted comments on February 24, 2000, in opposition to the Stipulation of Settlement filed by the Division of Ratepayer Advocate, dated February 8, 2000. According to the Utilities and NRDC, the DRA Stipulation is not a true settlement of the issues, ignores the mandates of the Act, and should be rejected.

The DRA Stipulation funding level is not phased in with recognition of the time it takes to initiate new programs. It also does not consider the four-year rate freeze. Further, it would break up the existing utility infrastructure and displace utility employees. And while some states have independent administrators running these programs, there is no evidence that such a system is better than a utility run system. The DRA Stipulation includes no incentive to ensure the effectiveness of an ISA, provides an inadequate transition plan, fails to establish baselines, and does not provide for measurement and evaluation, whereas the Utilities/NRDC Stipulation does.

The DRA Stipulation should be rejected because it is not a stipulation of settlement among adversarial parties. The Utilities are the only real adversarial party and they did not sign the DRA Stipulation.

The funding level in the DRA Stipulation ignores the rate cap on the utilities and the Board's ruling on load control programs. It discounts the lost revenues that energy efficiency and renewable measures incur. It eliminates natural gas fuel cells despite the plain language of the Act.

The DRA Stipulation recommends buyouts, buy-downs and public bonding of existing DSM payments, which is not mentioned in the Act. These strategies are impractical due to the sheer number of such projects, the transaction costs involved, and the increase in costs that would be passed along.

Beyond calling for an ISA, the DRA Stipulation provides no plan for its operation. The contention that an ISA would be less expensive than a utility run system is unsupported. Further, it is

impossible to conclude that the idea of using the Office of Sustainable Business (OSB) within the New Jersey Department of Commerce and Economic Development as the ISA would be practical. There are many unanswered questions about the relationship among the Board, the Legislature and OSB, as well as OSB's funding and procurement rules. It is highly unlikely that programs would be implemented in a timely manner using this scenario.

The DRA Stipulation calls for a permanent advisory committee with little Board oversight unless it cannot agree on program design. The members of the advisory committee need not have program design expertise and could have conflict of interest problems. The stipulation does not state who will manage the advisory committee or pay its members.

The DRA Stipulation does not meet the requirements of the Act with respect to environmental benefits, market barriers, lost opportunities and affordability for low income customers. The description of the concepts proposed is sketchy at best and does not constitute a program plan. Therefore, the Board cannot assure that the ratepayer funds would be spent prudently. The Act calls for a competitive marketplace, whereas, the DRA Stipulation focuses on acquiring energy savings and paying for technologies. Also ignored are strategic marketing efforts, updating industry standards and coordinating program activities and effects with national and state building energy codes, and appliance and equipment standards.

Contrary to the DRA Stipulation position on the Residential Audit–Based Retrofit program of replacing existing equipment with more energy efficient technology the Utilities/NRDC Stipulation has lost opportunity programs that capture energy efficiency improvements when customers build or remodel homes or replace failed equipment with new. The DRA Stipulation provides low income customers with an audit and energy savings measures installed, whereas the Utilities/NRDC Stipulation has a range of programs to make energy bills affordable, including installing all cost-effective measures, energy education, bill counseling and incentives to reduce bill arrearages.

The proposal to allocate 45% of the funding to pay-for-savings by the DRA Stipulation just continues programs that the Act considers capable of being eliminated because they can be delivered by the marketplace. New program funds are to be spent on programs that capture lost opportunities or transform markets. Further, a transition to new programs is not provided, and there is no baseline from which to measure program impacts and energy savings. Also ignored are numerous regional and national efforts for energy efficiency and environmental improvement.

Therefore, the DRA Stipulation is not a true settlement among adverse parties or in compliance with the Act. The Board should reject this Stipulation.

4. DRA

To achieve the objectives of the Act, the Board should adopt the DRA Stipulation, which fully funds both energy efficiency and renewable energy and supports transitioning energy efficiency programs to the competitive market, such as the auctioning of the direct load control programs. Incentives for any administrator should be capped at 5% and the Board should adopt the performance incentive/penalty proposal in the DRA Stipulation.

A truly independent administrator should administer renewable funds placed in a trust fund. If any of the programs in the other stipulation are approved any review necessary should be done by the

Advisory Committee proposed in the DRA Stipulation. A cap on administrative costs similar to other states' 5% is proposed along with program distinctions between market ready renewable technologies and emerging technologies. The former should be encouraged through the RPS not supported by the SBC. The proposed Advisory Committee is a much more open process than the collaborative group.

VI. DISCUSSION AND CONCLUSIONS

A. Funding Issues

1. Calculation of total collections

To determine the funding level for new energy efficiency and Class I renewable energy programs, the amount of collections must first be established. This will enable calculation of the 50% that the Act provides be committed to energy efficiency and renewable energy programs. The level of SBC collections asserted by both groups of stipulating parties, as of the date of the Act, is approximately $256 million. The basis for this number is the utilities' response to the Board's June 17, 1999 Order. However, the Board has determined that actual collections were substantially lower than that. As discussed in further detail below, actual collections amounted to approximately $215 million.

The $256 million asserted by all the parties as the total collections is not stated in the Act, and was calculated on the basis of several assumptions, which are discussed below and some of which the Board finds do not comport with its interpretation of the Act. This number must be based on a full year of collections, and not a theoretical collection amount, in order to comply with the Act's implicit language that CRA funding should be comprised of no less than 50% of the actual amount collected by the gas and electric utilities. Actual collections are determined by multiplying the applicable rate(s) in effect for that full year by the utility's sales during that year. The most recent full year of data prior to February 9, 1999 was for 1998. Using the 1998 sales, which is the same time period used in the utilities' calculation, and the rates in effect to collect demand side management program costs during 1998, the Board FINDS the actual collections were $215 million.

The different results were reached because some utilities did not have the same rate in effect for all of 1998, or had a much lower rate in effect than was assumed in the utilities' calculations set forth in the responses to the June 17, 1999 Order. The difference between the $256 million and the $215 million results from: NJNG's rate from 1/7/98 through 7/7/99 was $.0 per therm; RECO's rate from 1/1/98 through 6/18/98 was - $0.002293, and on 6/19/98 was increased to $0.000031 through 7/31/99, and additionally had some base rate collections; PSE&G's electric rate was $.0007135 per kwh from 1/1/97 through April 2, 1998, and on April 3, 1998 was increased to $.00434 per kwh through 8/1/99; and its gas rate was $.002895 per therm from 1/1/98 through 2/19/98, $.004577 per therm through 11/3/98, and $.004372 per therm from 11/4/98 through 7/31/00. The rates used by each of the abovementioned companies to arrive at the $256 million are $0.35 per therm for New Jersey Natural Gas Company, $0.000031 per kwh for Rockland Electric Company, $.00434 per kwh electric rate for PSE&G and $.004372 per therm gas rate. Therefore, based on actual collections, the Board FINDS that the CRA-SBC collections as of February 9, 1999 were $215 million as outlined in the chart on the following page. Assumptions made on rates for GPU, Conectiv, E'Town and SJG comport with the actual rates in effect.

	RATE	SALES/OUTPUT	REVENUES
Conectiv			
Base Rate Collections	N/A	N/A	$4,800,000
Energy Clause Collection	N/A	N/A	N/A
E'Town			
Base Rate Collections	N/A	N/A	$1,450,000
Energy Clause Collection	N/A	N/A	N/A
GPU			
Base Rate Collections	N/A	N/A	N/A
Energy Clause Collection	0.002869	17,792,192,402	$51,045,800
NJN			
Base Rate Collections	N/A	N/A	N/A
Energy Clause Collection 01/07/98 – 12/31/98[13]	 0.00	 424,242,424	 $0
PSE&G Electric			
Base Rate Collections	N/A	N/A	N/A
Energy Clause Collection 01/01/98 – 04/02/98 04/03/98 – 12/31/98[13] Total	 0.0007135 0.0043402	42,638,000,000 10,659,500,000 31,978,500,000	 $ 7,605,553 $138,793,086 $146,398,639
PSE&G Gas			
Base Rate Collections	N/A	N/A	N/A
Energy Clause Collection 01/01/98 - 02/19/98 02/20/98 – 11/03/98 11/04/98 –12/31/98[13] Total	 0.002895 0.004577 0.004372	2,254,760,000 308,871,233 1,655,549,808 290,338,959	 $ 894,182 $7,577,451 $1,269,362 $9,740,996
RECO			
Base Rate Collections	N/A	N/A	$2,537,062
Energy Clause Collection 01/01/98 – 06/18/98 06/19/98 –12/31/98[13] Total	 - 0.002293 0.0000310	1,353,821,772 626,838,026 726,983,746	 - $1,437,340 $22,536 $1,122,259
SJG			
Base Rate Collections	N/A	N/A	N/A
Energy Clause Collection	0.0011	480,431,818	$528,475
Total Actual Collections			$215,086,168

[13] The actual time period the rate was in effect may extend beyond 1998, but only the relevant portion in 1998 is noted.

2. Proposed statewide funding level

A broad range of interpretations of the Act regarding statewide funding levels have been presented to the Board. These interpretations have led to filings calling for funding levels from $66 million to $128 million. However, the Board must balance stabilization of utility rates with achieving the other goals in N.J.S.A.48:3-60(a)(3) of providing cleaner air by locating and developing new sources of renewable energy, and delivering energy efficiency in a competitive marketplace. Accordingly, based on the finding that the actual collections were $215 million, the Board FINDS the minimum annual amount of funding for energy efficiency and renewable energy programs to be $107.5 million.

3. Rate impacts

The Legislature's first enunciated goal for EDECA is to lower the high cost of energy. N.J.A.C. 48:3-50(a)(1). This is the Act's primary policy, and although the Act sets forth numerous other policies, it is important to consider this goal in all other decisions the Board must make in implementing the Act. During the transition, the Board must be vigilant to execute policies that do not exacerbate rate increases at the end of the rate cap. At the funding level proposed by many of the parties as 50% of the $256 million, or $128 million, new program spending, added to existing DSM commitments, would exceed actual collections. Even at the minimum funding level determined by the Board as $107.5 million, there would be minimal rate impacts after the end of the rate freeze. While the DRA states that these programs will result in decreased load, therefore negating the effects of any increased rates, the Board believes that this will only protect customers who have these technologies installed, while others without these load-reducing technologies will be affected by the rate increases.

In order to balance these potentially competing policies in EDECA of minimizing rate impacts and providing funding for energy efficiency and renewable energy programs, along with the Board's longstanding responsibility regarding utility rates, the Board has examined the rate impact analyses submitted in response to the August 16, 2000 Order and other evidence relevant to collection levels. The rate impact analyses submitted by each utility demonstrated the rate impact of both proposed stipulations, as follows, and in accordance with formulas and assumptions set forth in the Order.

	Rate change associated with deferred balances from CRA funding:	
	Utility/NRDC Stipulation	DRA Stipulation
RECO	3.96%	7.24%
Conectiv (w Beginning balance)	-0.13%	1.89%
Conectiv (w/o Beginning balance)	0.81%	2.87%
GPU	-1.13%	-1.13%
PSE&G electric	0.58%	3.01%
SJG	1.10%	1.78%
E'Town(w/Beginning balance)	0.91%	0.89%
E'Town(w/o Beginning balance)	0.91%	0.89%
PSE&G gas	3.23%	2.41%
NJN	0.75%	0.75%

Under the plan constructed by the Board, rate impacts as estimated under the Utilities/NRDC Stipulation will be further mitigated, as will be discussed below.

4. Funding level conclusions

The Board has DETERMINED that in order to mitigate the rate impacts that would result from the DRA Stipulation's funding levels, which are even greater than the rate impacts from the Utilities/NRDC Stipulation for the majority of utilities, the Board must adopt funding levels that are somewhat lower. The Board has DETERMINED that the minimum funding level would be $107.5 million. This funding level, while lower than that proposed in the DRA Stipulation, still comports with the Act's requirement that 50% of the CRA-SBC collections be used for these new programs. Moreover, the Board FINDS that the funding level should be increased beyond the minimum required amount to provide the maximum funding possible, while also mitigating rate increases. In addition, the Board FINDS that the funding be set initially only for three years, allowing the Board to address the fourth year's funding level after the end of the rate freeze period that is currently in place for the electric utilities.

Therefore, the funding levels being adopted herein by the Board are $115 million in 2001, $119.326 million in 2002, and $124.126 million in 2003, for a total of $358.452 million through 2003.[14] This amount is $35.952 million more than the statutory requirement of 50% of the total $215 million being collected as of February 9, 1999, which would total $322.5 million over the three years. Although the Board is only specifying the funding levels for the first three years, the fourth year funding level will be established after the rate cap is lifted. There will also be another four years of funding following a second Comprehensive Resource Analysis, set by the Board to comply with the minimum eight years of CRA in the Act. Additionally, the Board recognizes the delay in completing the CRA Proceeding and will apply $15 million that might have been spent in 2000, to the fourth year of funding, over and above the fourth year's funding, to be determined by the Board.

The Board FINDS that the Conectiv and GPU overcollection amounts resulting either from DSM historically, or CRA, will be applied to offset the CRA deferrals in order to offset the associated rate impacts, making them 0%. Any overcollection not exhausted by the CRA deferrals will be applied to offset other deferred balances.

5. Funding allocation
    a. Renewable energy and energy efficiency

While the two groups of stipulating parties have disagreed on the overall level of funding for each of the initial four years of the CRA, they have also disagreed, as a practical matter, over the level of funding that should be allocated to energy efficiency versus Class I renewable energy programs. From a philosophical perspective, both stipulations supported the statutory requirement of 25% of

[14] This adjustment up from $107.5 million also reflects the Board's recognition that adjusting the annual calculation of collections to a time period that ends more proximate to the effective date of the Act (or February 1, 1998 through January 31, 1999) would have resulted in a collection amount of $230 million, not $215 million. However, all of the parties interpreted the Act to require a 1998 annual calculation, an interpretation with which the Board agrees. Yet by establishing a minimum threshold, the Legislature encouraged Board discretion in adjusting beyond that maximum as we have performed here.

the funding being allocated to renewable energy, as indicated by the language in the Utilities/NRDC Stipulation stating that each administrator is responsible for ensuring that 25% of the funding be allocated to renewable energy as an average over the eight years with flexibility to spend up to the 25% in the early years if demand requires it. However, the DRA Stipulation allocated the 25% immediately on the assumption that the renewable energy market is currently in a position to use this level of funding, while its opposing stipulation assumes this market will need time to mature before it could use the full 25% of funding.

The Board FINDS that the proposal in the DRA Stipulation more accurately reflects EDECA in this regard, and ADOPTS the allocation of the statewide funding between Class I renewable energy programs and energy efficiency as 25% and 75%, respectively, as set forth in EDECA. Although there have been arguments on both sides as to the types of programs that are currently in a position to need and use the funding in the short term, the Board FINDS that there is no real evidence to show that funding should be held back from any particular program. Allowing the market to determine the actual funding requirement is most appropriate.

b. Allocation of funding among the utilities
   i. Statewide/Parity

The next step in determining the funding levels is to allocate the statewide funding level to each utility. The two proposed stipulations differ conceptually on how this should be done. The DRA Stipulation proposes that the statewide level be divided between the electric and gas utilities based on the amount of gas revenues and electric revenues. The DRA Stipulation further proposes the next level of allocation be based on the same rate for each electric and gas utility. The allocation for the electric utilities would solely fund renewable programs. In this way, the DRA's recommendations attempt to achieve parity among the utilities. However, the existing situation is such that each utility's rates were unbundled as part of EDECA, and at least for the electric utilities, these rates must remain fixed until the end of the transition period. Each utility is in a unique situation with regard to the CRA portion of the current SBC collection rate, and the level of continuing recoverable expenses already included in that rate. As some parties have argued, those utilities, which have historically pursued energy efficiency savings aggressively under the Board's rules, could be penalized by instituting parity on a prospective basis. The Board FINDS that it is appropriate at this time, given the aforementioned, to accept the allocation methodology for each utility as proposed in the Utilities/NRDC Stipulation, with modifications for the increase in funding ordered by the Board for 2001, and based on RECO's allocation as discussed in detail below, because these are proportions that each utility finds acceptable under its own unique situation. Additionally, all of the utilities that have the lowest CRA-SBC rates have agreed to increase their spending, helping to move toward parity.

It should be noted that the Utilities/NRDC Stipulation, having been signed by all the utilities except RECO, assigned a spending level to RECO without its concurrence. The impact to RECO's rates resulting from this allocation would be the highest of any of the utilities. To address the excessive rate impact for Rockland Electric Company relative to the other electric utilities as demonstrated in the chart above, the Board FINDS that RECO's proposal for an annual spending level of $534,000 as proposed in its February 10, 2000 comments, is a fair allocation. This amount results in a reduced rate impact for RECO as compared to either the Utilities/NRDC Stipulation or the DRA Stipulation. The $7 million increase in 2001 and the remaining $566,000 from RECO's original allocation for 2001 in the Utilities/NRDC Stipulation, will be allocated among the other six utilities

so that their total allocation will be as follows: PSE&G electric $43.045 million, PSE&G gas $20.773 million, GPU $32.338 million, Conectiv $8.138 million, E'Town $3.962 million, SJG $2.247 million, NJN $3.962 million and RECO $0.534 million.

Recalculation of CRA allocation

($millions)

Utility	Stip-2001	New 2001	Stip-2002	New-2002	Stip-2003	New-2003
PS-elec	40.200	43.045	43.100	43.285	43.200	43.385
PS-gas	19.400	20.773	21.900	21.989	21.800	21.889
GPU	30.200	32.338	32.700	32.839	34.800	34.939
Conectiv	7.600	8.138	9.800	9.835	11.400	11.435
Etown	3.700	3.962	4.000	4.017	4.200	4.217
SJG	2.100	2.247	2.800	2.810	3.500	3.510
NJN	3.700	3.962	4.000	4.017	4.200	4.217
RECO	1.100	0.534	1.700	0.534	1.900	0.534
Total	108.000	115.000	120.000	119.326	125.000	124.126

The difference in funding for 2002 and 2003 versus funding as proposed in the Utilities/NRDC Stipulation will only be partially allocated to the other utilities, as shown above. The Board DIRECTS that the remaining difference of $0.674 million in 2002 and $0.874 million in 2003 be eliminated from the proposed statewide funding level for 2002 and 2003. Based on these allocations, funding levels for 2001-2003 shall be $115 million, $119.326 million, and $124.126 million, respectively.

ii. Renewable energy and energy efficiency allocations

The Board disagrees with the DRA assertion that renewable energy projects should be funded solely by the electric utilities. Although the Class I renewable projects all produce electricity, the Board is not persuaded that this is a sound basis to determine their funding. There are significant environmental benefits from these projects, which will accrue to all New Jerseyans. The environmental benefits are a primary rationale for the importance of funding these projects through a non-bypassable distribution charge in the Societal Benefits Charge. Additionally, EDECA clearly states that the 25% of funding for Class I renewable energy programs should be provided by both the public electric and gas utilities. The Board therefore FINDS that 25% of each utility's total funding for CRA be allocated to Class I renewable energy programs.

The Board FINDS the 25% allocated to each utility for renewable energy programs will be split 40% to grid supply and 60% to customer sited programs in the first year. Thereafter, the funding will be allocated 50% to each category. This initial apportionment recognizes that grid supply projects may not be as mature and in need of funding in the immediate term, but that equal funding will be available going forward.

B. Program Administration

While not expressly required in the Act, the issue of program administration necessarily is a part of this CRA Proceeding. The two major administration issues are: which entity will administer the

programs; and how much money is necessary for the function. The proposal for a trust fund is intertwined with the issue of who will administer the programs. The issue of performance incentives is also tied to administration.

1. Administrative costs

Administrative costs have been a concern throughout this proceeding, and while assertions were made that utility administration has resulted in excessive administrative costs, these assertions remain unsubstantiated. The Utilities/NRDC Stipulation details costs for the renewable energy programs, but has not provided that level of detail for energy efficiency programs. The costs, as noted previously, start out high in the first year, and decline as program start-up reaches completion. The average proposed cost for the renewable energy programs over the four years is slightly more than 5.5%, which closely aligns with the 5% cap discussed in the DRA Stipulation. The Board agrees that programs should be administered effectively and efficiently and, to the greatest extent possible, funding should be spent on actual program incentives and implementation. Therefore, the Board will include in its oversight, stringent monitoring of the administrative costs and herein specifically defines what is to be included as such a cost. The Board DETERMINES that administrative costs shall be defined as the direct labor costs of the administering entity plus overhead. The Board DIRECTS that these costs shall be itemized in the quarterly reports outlined herein. The Board will also track other costs, which could be considered administrative in nature. In its oversight of the energy efficiency and renewable energy programs, the Board will monitor administrative costs to ensure they are not excessive and the Board's consultant will evaluate these costs. Additionally, the administration budget for energy efficiency programs will be evaluated in the compliance filing described further herein.

2. Utilities versus independent statewide administration

Some parties have argued that there is an inherent conflict of interest in the utilities administering the energy efficiency and renewable energy programs, and that it would be more cost-effective for an independent statewide administrator to oversee the funds. Other parties have asserted that there are numerous advantages to utility administration, including existing experience and infrastructure associated with prior programs, and more immediate start-up of programs due to that existing infrastructure. To address these concerns, the Board, in consultation with the DEP, will oversee and monitor the administration of all energy efficiency and renewable energy programs resulting from the CRA Proceeding, while direct administration of the various programs is set forth below.

Administration of the energy efficiency program was not as controversial in these proceedings as was the administration of the renewable energy programs, as evidenced by the settlement proposals. The DRA Stipulation proposed that energy efficiency programs transition from utility administration to an ISA over time. The Utilities/NRDC Stipulation proposed that individual utilities should administer these programs, while there would be joint or coordinated efforts for each program between the utilities and the NRDC, regarding program strategies and evaluation.

Because the Board has ordered the utilities to offer and implement such programs for over 10 years, the infrastructure already exists within each utility for the administration of energy efficiency programs. This existing infrastructure will enable a rapid start up for the new energy efficiency programs. The Board is confident that any concerns regarding real or perceived conflicts of

interest can be addressed through the Board's broad authority over the utilities, and its oversight of the program administration. The Board therefore FINDS that utility administration is appropriate for a period of one year, during which time the Board will retain a consultant to assist in evaluating how best to continue the administration of these programs through the remainder of the 4-year period. At the conclusion of the first year, the Board FINDS that the consultant would have 90 days to submit its recommendations to the Board. Thereafter, the Board FINDS that it would have an additional 60 days to take action on these recommendations. The Board FINDS that utility administration would continue during that evaluation period. The Board HEREBY ADOPTS paragraph 3 of the Utilities/NRDC Stipulation at p. 17 of 20, which sets forth the minimum requirements of any administrator, with one exception. The administrator may not relinquish its role without Board approval.

In addition, the Board shall require quarterly reports from each utility for each program, including at minimum, a detailed breakdown of spending compared to the budget by category, such as administration, incentives, advertising costs, marketing costs, training costs, consultant costs, contractor costs and, the goals and incentive metrics compared to achievements.

Also in accordance with paragraph 3 of the Utilities/NRDC Stipulation, the utilities will administer the Customer Sited Clean Energy Generation Program. However, the Board HEREBY MODIFIES the stipulation to find that administration of the Customer Sited program cannot be relinquished by the utilities without Board approval and administration will be for an interim one year period, during which time the Board will retain a consultant to assist in identifying the appropriate entity to act as ISA thereafter. The consultant will have 90 days to submit its recommendations to the Board, and the Board will have 60 days thereafter to make its determinations.

The interim utility administration of these programs will be performed in accordance with any rules set forth by the Board and will continue until the Board makes its determination. The Board will closely monitor the administration of these programs to ensure equity and timeliness. Additionally, there will be no Renewable Working Group appointed during this interim administration.

As part of the oversight of the Customer Sited program, the Board will impose stringent reporting requirements. Reports will be made to the Board Staff on a quarterly basis and shall at a minimum include the type and size of the technology receiving the incentives, the cost of the system, the cost of installation, the amount of any other incentives, the amount of energy savings provided, the buy down amount and to whom the incentive was paid, application dates, funding reservation dates, inspection dates and the check issue dates. These reports will enable Board Staff to ensure that the concerns expressed by some representatives of the renewable industry that utilities lack the appropriate incentives to administer this program properly can be monitored by Staff and appropriately addressed if the need arises.

The Board Staff, in consultation with DEP Staff, will administer the grid supply program and the market development program. The Board shall appoint an independent advisory group to assist with policy recommendations to the Board on program and technological issues, in order to keep current its understanding of emerging technologies.

Initially, however, the utilities will administer, with the Board's oversight, any parts of the market development program that must be implemented in order for the Customer Sited Clean Energy Generation program to be launched. The utilities shall keep the Board fully apprised regarding

these actions in the interim.

The DRA Stipulation proposes two separate trust funds, one for energy efficiency and one for renewable energy. A major reason the DRA supports a trust fund is based on the argument that it would accommodate greater amounts of dollars flowing to projects in later years when the renewable energy industry has expanded and can utilize greater amounts of funding. The opposing stipulation proposes no trust fund.

Although the Board is not theoretically opposed to the concept of a trust fund, the Board FINDS that it is impractical to establish such a fund for these programs. Other states that have set up trust funds have had the statutory authority to do so, an authority not currently available to the BPU. In addition, the Board DETERMINES that any unspent funds in a trust fund could ultimately be added to the state treasury, and not necessarily be made available for energy efficiency and renewable energy programs.

3. Performance incentives

The Utilities/NRDC Stipulation, in order to encourage the administrator to achieve certain performance levels, proposes goal-driven incentives as part of the administration, with the caveat that poor performance could result in program administration being turned over to some other entity. The DRA Stipulation also supported the concept of performance incentives, but only for a non-government ISA. Some parties have argued that the proposed criteria for incentives in the Utilities/NRDC Stipulation are too easily achieved. The Board has historically supported performance incentives as can be seen in its DSM regulations, in order not only to remove disincentives for utilities to pursue energy efficiency, but to provide an incentive for such pursuits. However, the Board had stringent performance requirements associated with eligibility to earn incentives. Incentives could only be earned for performance-based programs under the DSM regulations, which meant that the actual energy savings had to be measured and monitored. The Board FINDS that the proposal in the Utilities/NRDC Stipulation is not based on performance results but rather on implementation milestones. However, the Board DETERMINES it would be inappropriate to adopt the performance incentives as proposed.

C. Program Design

1. Energy efficiency

With one exception, the DRA Stipulation and the Utilities/NRDC Stipulation are similar in their energy efficiency programs with regard to fundamental structure. That exception is the pay-for-savings proposal in the DRA Stipulation. These are programs in which the incentive for efficiency improvement is paid based on the measured level of savings. This program type is not included in the Utilities/NRDC Stipulation although both stipulations contain what the DRA Stipulation refers to as pay-for-technology and pay for infrastructure. A pay-for-technology program design is one in which the incentive covers some portion of the incremental cost of the more expensive energy efficient equipment, while pay-for-infrastructure supports infrastructure development.

The standard offer program, which was an option under the existing DSM regulations for a performance program, is an example of the pay-for-savings approach. The Board FINDS that there is no support in the Act requiring continuation of this type of program. The Board DETERMINES that the intent of the Act is to establish a funding requirement for new programs,

which produce additional savings beyond any old programs that may be continuing to receive funding. Energy load is reduced through improvements in energy efficiency and through the replacement of traditional energy supply with the use of renewable energy programs, hence assisting in reducing air emissions and producing environmental benefits. Additionally, based on our experience with the standard offer, the Board FINDS that it is more expensive to pay for the value of energy savings than it is to provide incentives for the technology directly. In addition to which, these technologies have already been proven to save energy, so that the energy savings are assured through pay-for-technology programs.

For the foregoing reasons, the Board HEREBY ADOPTS the energy efficiency programs as set forth in the Utilities/NRDC Stipulation and DIRECTS the utilities to file as part of its compliance filing described therein, detailed proposed budgets for each of these programs, including a breakdown of administration, advertising, incentives, contractor costs, and training within 30 days of the date of this Order for Board approval. The Board FINDS that the utilities must begin implementation of the energy efficiency programs at least within 60 days of the date of this Order. The Board wishes to make clear that it expects a diversity of technologies to be supported that address all market sectors. Additionally, the Board Staff will continue to work with DEP to develop appropriate environmental goals for these programs, thus ensuring that energy savings are maximized.

2. Renewable Energy
   a. Customer sited renewables programs

The two stipulations significantly narrow the gap between the positions of various parties on this issue. Both propose a buy down program for customer-sited projects, which would provide an incentive to offset the cost of a renewable energy project designed to supply some or all of the customer's electricity. The differences between the two are small, relative to the similarities.

The basis for the virtual agreement by all the parties on this type of program design is because it addresses one of the most significant market barriers to customer's embracing renewable technologies, that of first cost. Renewable technologies cannot currently compete with traditional generation on a cost basis. However, because these technologies can provide very significant environmental benefits and reduce the State's dependence on fossil fuels, it is important that the State assist these technologies to develop market share.

Customers are used to buying energy, but are unfamiliar generally with the fact that they are also purchasing capacity, distribution and transmission. A renewable energy technology sited at the customer's facility and designed to meet that customer's individual electricity needs is, in fact, distributed generation and requires a different perspective. This educational issue is also a market barrier, which needs to be addressed.

Buying down the initial cost of the equipment and installation of a renewable distributed generation technology allows these emerging technologies to compete with traditional electricity supply. Reducing the price of the distributed generation allows renewable energy to more closely track the price a customer pays for traditional supply, and therefore addresses a significant market barrier. This meets several goals of the Act, providing significant environmental benefits to New Jersey, and creating a market for renewable energy technologies that can eventually compete with traditional energy supply methods without subsidy.

The Act requires that the Board, as a result of the CRA, initiate a program, which provides financial incentives for Class I renewable projects considering, among other things, market barriers and environmental benefits. A customer-sited buy down program for renewable energy projects has the support of all of the parties to this case and can meet the Board's legislative mandate. This program, under both stipulations, targets the technologies (photovoltaics, fuel cells and small wind turbine systems) that DEP recommends as those distributive technologies with the highest environmental benefits. Both stipulations provide incentives that decline with each discrete block of power provided; however, under the DRA Stipulation the blocks are smaller, and incentives decline more rapidly. The differences in eligible technologies are sustainable biomass is supported only by the Utilities/NRDC Stipulation, solar thermal electric generation is supported only by the DRA Stipulation, while both support the other technologies. Each stipulation proposes a maximum incentive based on a percent of system cost, for the DRA Stipulation, this is 60%, and for the Utilities/NRDC Stipulation, it starts at 60% and declines with each block ultimately to 30%. Both stipulations also propose a cap to protect against any one technology using all the funding. In the Utilities/NRDC Stipulation no one technology can receive more than 50% of the funding, while the DRA Stipulation has its cap based on the size of the project with 50% for small, 25% for medium and 25% for large. Additionally, the DRA Stipulation proposes a cap on the maximum project size.

The Act defines Class I renewable energy as electricity produced by solar, photovoltaic, wind, fuel cells, or geothermal technologies, wave or tidal action, and landfill gas or a sustainably fueled biomass facility. Although solar thermal electric generation is covered by this definition, the DEP advises that the technology is pre-emerging and should not be supported under this program at this time. Sustainable biomass is supported by the DEP recommendation provided it meets particular criteria, and that initially, funding be limited to small-scale sustainable gasifiers or digester technologies operated at the farm-scale level for farm generated sustainable biomass.

Limiting the incentive to a percentage of the cost of the system addresses the concept that emerging technologies should be supported with these incentives to assist in attaining market competitive status in the future. Theoretically, pre-emerging technologies would require more than the maximum 60% proposed by both stipulations, and as technologies mature and become more competitive less incentive would be required. This approach supports the concept of declining maximum incentives and market transformation.

The Board supports development of diverse technologies as a goal of the programs to be determined as part of the CRA proceeding. The Board has endeavored in this Order to make decisions that facilitate this goal. Both stipulations obviously agree with this philosophy, as both propose limits on the amount of funding available for projects, the DRA Stipulation by size, and the Utilities/NRDC Stipulation by technology. The Board must balance this desire for diversity without hindering competition.

For the foregoing reasons, the Board ADOPTS the Customer-Sited Clean Energy Generation Program design set forth in the Utilities/NRDC Stipulation with modifications. The modifications are that this will be implemented within 30 days from the date of this Order, including acceptance of applications, and shall be a full-scale program, not a pilot program as proposed. Applications submitted to the Board under the Interim Order dated December 4, 2000 shall be processed immediately upon adoption of guidelines for interim funding.

b. Grid supply

Both stipulations proposed a competitive incentive program for grid supply renewable energy production, which is also supported by DEP. Grid supply projects are those that supply electricity to the grid, as opposed to those projects, which are designed to meet individual customer needs. The DRA Stipulation additionally proposed a Customer Credit Program, which would provide a direct incentive to customers to buy green power. In accordance with recommendations in both stipulations, the Board FINDS that a direct competitive incentive program, which will provide production credits, is an appropriate mechanism to encourage development of renewable energy projects to provide power to the grid. The Board also FINDS that this type of program can effectively promote competition among technologies and encourage cost effective grid supply technologies. However, the Act also intends to encourage the development of a thriving, diversified renewable energy market. As has been noted by some parties, there are currently some renewable energy technologies, which are less able to compete on the basis of cost than others because they may yet be emerging technologies. For the successful implementation of the full intent of the Act, the Board FINDS that it is appropriate to provide an arena in which grid supply technologies, which may not be able to compete as yet on a cost basis, are not denied the opportunity to prove themselves as a viable alternative to traditional electricity supply. Therefore both cost, and the need to foster diverse technologies will be considered when reviewing project funding. Additionally, the Board will work with DEP to develop environmental goals for this program. The Board does not believe that a customer credit program is appropriate at this time until the effectiveness of the Renewable Portfolio Standards can be determined. The Board may consider other additional mechanisms to foster the development of renewable grid supply as it determines the details of this program. Program details will be issued within sixty days of the date of this Order.

The Board FINDS that as many parties argued, grid supply locations are, by their nature, dependent on the location of the resource. Therefore, the Board DETERMINES that this program will not be bound by utilities' service territories, and the utilities will be appropriately and proportionately billed by the Board for program expenses.

c. Infrastructure development

The Board FINDS that the two stipulations are again similar in intent with regard to such things as infrastructure development, training, and certification for renewable energy programs. Both stipulations support the need for funding for these types of activities. The DRA Stipulation allocates 20% ($6.4 million) of its renewable energy budget to this type of activity while the Utilities/NRDC Stipulation allocates 25% (approximately $1.5 million) in 2000. The Board FINDS that the amount of money proposed in the Utilities/NRDC Stipulation is a more appropriate level of funding for the first year. Additionally, as the Board will be administering this program, adjustments in the level of funding can be made as needed. Therefore, the Board ADOPTS for the first year (2001), the funding in the Utilities/NRDC Stipulation proposed for 2000, which is approximately 5.5% of the revised renewable energy budget, and ADOPTS the program description set forth therein as a guideline. The Board will determine the precise program details as it sees fit. The Board DETERMINES that the funding shall continue to be 5.5% of the annual renewable energy budget for 2002 and 2003 unless the Administrator finds a modification to be appropriate. Additionally, the Board is allocating $100,000 of that 5.5% to develop an environmental tracking system through PJM.

3. Renewable Portfolio Standards

Under EDECA, the Renewable Portfolio Standards (RPS) require electric suppliers to have a certain percentage of its power supplied by Class I and Class II renewable energy. While not a part of the Act's description of CRA, RPS was raised within this proceeding as an issue that should be addressed. Some parties have argued that the RPS should not be supported by SBC funding. The Board FINDS that fulfilling the requirement for RPS may be difficult initially for suppliers because of the current shortage of developed renewable energy supply, and that in the interest of providing cleaner air for New Jersey citizens, the prudent response is to allow CRA-SBC funding to contribute to fulfilling the RPS standards. The Board will reconsider this decision after one year and determine if it remains appropriate. Additionally, the Board will address the details of eligibility for RPS in its final order adopting those standards.

D. Lost revenue recovery

The two stipulations differ substantially on this issue. The DRA Stipulation allows no lost revenue recovery for new programs, while the Utilities/NRDC Stipulation proposes to allow lost revenue recovery for new energy efficiency programs, but not for renewable energy programs. The recovery also would not count as a new program cost and would only be in effect through 2003. The litigated positions of the parties to the Utilities/NRDC Stipulation demonstrate some significant compromise on this issue already, as NRDC was originally opposed to this concept.

The Board therefore ADOPTS the proposal in the Utilities/NRDC Stipulation as a reasonable compromise regarding lost revenue recovery with the caveat that if program administration is taken from the utilities, the Board may wish to reconsider this issue, prospectively. Lost revenue recovery and incentives were allowed under the DSM regulations only for programs with measured and verified savings. The amount of fixed cost revenue erosion resulting from energy efficiency measures can be significant and it is therefore important for the calculation of these costs to be accurate. This need for accuracy is the reason the Board was historically unwilling to allow the recovery of lost revenues for programs that did not have verified, measured savings. The Board also FINDS that, under the Utilities/NRDC Stipulation, the program evaluation plans for determining energy savings have not yet been submitted to the Board, therefore, the basis for determining the collection of lost revenues for the new energy efficiency programs must still be approved by the Board.

The Board ADOPTS the proposal in the Utilities/NRDC Stipulation for continuation of lost revenue recovery for legacy programs and GPU's transition payment in recognition of the high cost of continued measurement. However, the Board wishes to ensure that continued lost revenue recovery is based on accurate savings data. Measurement and monitoring of GPU's performance-based legacy programs has been ongoing, since 1993 under GPU's Board approved DSM plan and a significant amount of data has been collected.

Therefore, the Board is willing to allow the use of this data to predict the savings for lost revenue recovery going forward in exchange for the reduced transition payment of 90% for 2001. To compensate for concerns about accuracy and to protect ratepayers from paying too much, the Board DIRECTS that any continued recovery beyond 2001 for legacy program lost revenues shall decline to 80% in 2002 and 70% in 2003. However, the Board expects a base rate case filing prior to the end of the transition period, at which time lost revenues are appropriately reset to zero. If there is no base rate case in 2003, the Board shall reconsider the eligibility of legacy lost revenue recovery, prospectively.

E. Findings

Based on the foregoing, the Board HEREBY FINDS AND DIRECTS as follows:

1) The CRA-SBC statewide collections from electric and gas utilities as of February 9, 1999 are $215 million.

2) Consistent with the various goals and the Act's requirement that at least 50% of the CRA-SBC collections be used for new programs, the statewide funding levels being adopted herein are $115 million in 2001, $119.326 million in 2002, and $124.126 million in 2003, for a total of $358.452 million through 2003.

3) The funding is set only for three years, allowing the Board to address the fourth year's funding level after the end of the rate freeze period that is currently in place for the electric utilities. The fourth year funding level will be established after the rate cap has ended. There will also be another four years of funding determined by the Board to comply with the minimum eight years of CRA in the Act.

4) In recognition of the delay in completing the CRA Proceeding, $15 million will be applied to the fourth year of funding, over and above the level to be determined by the Board.

5) The Conectiv and GPU DSM-CRA overcollection will be applied to offset the CRA deferral in order to bring the associated rate impact up to zero. Any such overcollection over and above that level will be applied to offset the BGS deferred balance. If no such deferral exists at the end of the transition period, any DSM-CRA related overrecoveries shall be applied to CRA in a manner to be determined by the Board at that time.

6) As set forth in EDECA, the allocation of the statewide funding between Class I renewable energy programs and energy efficiency is 25% and 75%, respectively.

7) The allocation for each utility in millions for each of the three years is:

Utility	2001	2002	2003
PS-electric	43.045	43.285	43.385
PS-gas	20.773	21.989	21.889
GPU	32.338	32.839	34.939
Conectiv	8.138	9.835	11.435
Etown	3.962	4.017	4.217
SJG	2.247	2.810	3.510
NJN	3.962	4.017	4.217
RECO	0.534	0.534	0.534
Total	115.000	119.326	124.126

8) In accordance with EDECA, annually 25% of each utility's total funding for CRA for the program year will be allocated to Class I renewable energy programs.

9) Each utility's allocation for renewable energy programs will be split 40% to grid supply and 60% to customer sited programs in the first year. Thereafter, the funding will be allocated on a 50%/50% basis.

10) Administrative costs shall be defined as the direct labor costs of the administering entity plus overhead and these costs shall be separately reported in the quarterly reports outlined herein. Other costs, that could be considered administrative in nature, shall also be tracked. Administrative costs shall be monitored to ensure they are not excessive and shall be evaluated by the Board's consultant. The administration budget for energy efficiency programs shall be detailed in the compliance filing for evaluation.

11) The Board, in consultation with the DEP, shall oversee and monitor the administration of all energy efficiency and renewable energy programs resulting from the CRA Proceeding.

12) The utilities shall directly administer the energy efficiency programs for a period of one year. The Board shall retain a consultant to assist in evaluating how best to continue the administration of these programs through the remainder of the 4-year period. The consultant shall issue a report within 90 days of the conclusion of the first year. Thereafter, the Board would have an additional 60 days to take action on the report. Utility administration will continue during that evaluation period. The utilities shall comply with paragraph 3 of the Utilities/NRDC Stipulation at p. 17 of 20, which sets forth the minimum requirements of any administrator, except that the administrator may not relinquish its role without Board approval. The utilities shall begin implementation within at least 60 days of the date of this Order.

13) Consistent quarterly reports from each utility shall be submitted for each energy efficiency program, including at least a detailed breakdown of spending compared to the budget by category such as, administration, incentives, advertising costs, marketing costs, training costs, consultant costs, contractor costs and, the goals and incentive metrics compared to achievements.

14) Also, in accordance with paragraph 3 of the Utilities/NRDC Stipulation, the utilities shall administer the Customer Sited Clean Energy Generation Program except that administration of the Customer sited program cannot be relinquished by the utilities without Board approval and shall be for an interim one year period during which time the Board shall retain a consultant to assist in identifying an entity to act as ISA thereafter. The utilities shall begin implementation within at least 30 days of the date of this Order. The consultant shall have 90 days to submit its recommendations to the Board, and thereafter, the Board shall have 60 days to make its determinations.

15) The interim utility administration of these programs shall be performed in accordance with any rules set forth by the Board and shall continue until the Board makes its determination. The Board shall closely monitor the administration of these programs to ensure equity and timeliness. Additionally, there shall be no Renewable Working Group appointed during this interim administration.

16) As part of the oversight of the Customer Sited program, there shall be stringent reporting to Board Staff on a quarterly basis, which at a minimum shall include the type and size of the technology, the cost of the system, the cost of installation, the amount of any other incentives, the amount of energy savings provided, the buy down amount and to whom the incentive was paid, along with reservation dates, application dates, inspection dates and the check issue dates.

17) The Board in consultation with DEP shall administer the grid supply program and the market development program. An independent advisory group shall assist with policy recommendations to the Board on program and technological issues.

18) Initially the utilities shall administer, with the Board's oversight, any parts of the market development program that must be implemented in order for the Customer Sited Clean Energy Generation program to be launched. The utilities shall keep the Board fully apprised regarding these actions in the interim.

19) There shall be no trust fund.

20) The proposed performance incentives are denied.

21) There is no support in the Act requiring continuation of pay-for-savings type programs only to determine the funding for programs with environmental benefits above and beyond those provided by standard offer and similar programs. The intent of this language simply establishes a funding requirement for new programs, which produce additional savings beyond any old programs that may be continuing to receive funding. Improvements in energy efficiency and the use of renewable energy both reduce the use of traditional energy supply and hence new energy efficiency and renewable energy programs reduce air emissions and produce environmental benefits.

22) The energy efficiency programs shall be as set forth in the Utilities/NRDC Stipulation. The utilities shall file within 30 days of the date of this Order, as part of its compliance filing, detailed proposed budgets for each of these programs, including a breakdown of administration, advertising, incentives, contractor costs, and training for Board Staff approval. Diversity of technologies that address all market sectors is expected to result and environmental goals also need to be achieved through these programs. The Board Staff shall continue to work with DEP to

develop appropriate environmental goals for these programs.

23) The renewable distributed generation program shall be the Customer-Sited Clean Energy Generation Program design set forth in the Utilities/NRDC Stipulation with modifications. The program shall be implemented within 30 days from the date of this Order, including acceptance of applications, and shall be a full-scale program, not a pilot program. Applications submitted to the Board under the Interim Order dated December 4, 2000 shall be processed immediately upon the Board's adoption of guidelines for interim funding.

24) It is appropriate to provide an arena in which grid supply technologies, which may not be able to compete as yet on a cost basis, are not denied the opportunity to prove themselves as a viable alternative to traditional electricity supply. Therefore, both cost, and the need to foster diverse technologies when awarding funding shall be considered. Board Staff shall work with DEP to develop environmental goals for this program. Other additional mechanisms to foster the development of renewable grid supply may be considered in the development of this program. Program details shall be issued by the Board within sixty days of the date of this Order.

25) The grid supply program shall not be bound by utility service territories, and the utilities shall be appropriately and proportionately billed by the Board for program expenses.
26) The amount of money proposed for 2000 in the Utilities/NRDC Stipulation for the market development program shall be the level of funding for the first year and the program description set forth therein as a guideline. Additionally, as the Board shall be administering this program, adjustments can be made as needed. The Board shall determine the precise program details as it sees fit. The funding shall continue to be 5.5% of the annual renewable energy budget for 2002 and 2003 unless the Administrator finds a modification to be appropriate. Allocation of $100,000 shall be included to develop an environmental PJM tracking system.

27) CRA-SBC funding may contribute to fulfilling the RPS standards. The decision may be reconsidered by the Board after one year to determine if it remains appropriate. The details of eligibility for RPS shall be addressed in the Board's final order adopting those standards.

28) The program evaluation plans for determining energy savings must still be approved by the Board, prior to eligibility for collection of lost revenues for the new energy efficiency programs.

29) The continuation of lost revenue recovery for legacy programs and GPU's transition payment of 90% for 2001 as proposed in the Utilities/NRDC Stipulation, however, any continued recovery beyond 2001 for legacy program lost revenues shall decline to 80% in 2002 and 70% in 2003. If a base rate case is filed prior to the end of the transition period, lost revenues shall be appropriately reset to zero. If there is no base rate case in 2003, the Board shall reconsider the eligibility of legacy lost revenue recovery, prospectively.

DATED: March 9, 2001

BOARD OF PUBLIC UTILITIES
BY:

SIGNED

HERBERT H. TATE
PRESIDENT

SIGNED

FREDERICK F. BUTLER
COMMISSIONER

Having been sworn in as Acting Commissioner on February 13, 2001, I have not had an adequate opportunity to review this matter prior to the Board's March 1, 2001 agenda meeting and I therefore abstain from rendering a decision

SIGNED

CAROL J. MURPHY
ACTING COMMISSIONER

ATTEST:

SIGNED

FRANCES L. SMITH
BOARD SECRETARY